IN THE CIRCUIT COURT OF
THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION

NORMA R. BROIN, et al.,
Plaintiffs,
vs. CASE NO. 91-49738
CA 22

PHILIP MORRIS COMPANIES,
INC., et al.,
Defendants.
_____/

TRIAL
VOLUME 90

TRANSCRIPT OF PROCEEDINGS in the above-styled cause before the Honorable Robert Paul Kaye, at the Dade County Courthouse, 73 West Flagler Street, Miami, Florida, on Tuesday, August 19, 1997, at 2:20 p.m.

APPEARANCES:
STANLEY M. ROSENBLATT, ESQ.
SUSAN ROSENBLATT, ESQ.
On behalf of the Plaintiffs
HUGH R. WHITING, ESQ.
JONES DAY REAVIS & POGUE
On behalf of R.J. Reynolds

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Digitized by the Internet Archive in 2014 http://www.industrydocuments.ucsf.edu/docs/tqjl0001

DAVID L. ROSS, ESQ.
GREENBERG TRAURIG HOFFMAN LIPOFF ROSEN & QUENTEL
On behalf of Lorillard
DAVID HARDY, ESQ.
SHOOK HARDY & BACON
On behalf of Lorillard and Philip Morris
RICHARD A. SCHNEIDER, ESQ.
MICHAEL C. RUSS, ESQ.
KING & SPALDING
On behalf of Brown & Williamson and American
Tobacco Company
JOSEPH R. MOODHE, ESQ.
DEBEVOISE & PLIMPTON
On behalf of The Council for Tobacco Research
JOSE MARTINEZ, ESQ.
MARTINEZ & GUTIERREZ
On behalf of Philip Morris
JEFFREY FURR, ESQ.
WOMBLE & CARLYLE
On behalf of R.J. Reynolds

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Creative Commons http://www.industrydocuments.ucsf.edu/docs/tqjl0001

INDEX

WITNESS	PAGE
(DEPOSITIONS READ)	
Cathy Lynn Ellis, Ph.D.	11387
Dr. Richard Carchman	11409
Alexander Spears, Ph.D.	11434
Martin Orlowsky	11458
Christopher Coggins	11466

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/tqjl0001

(The following proceedings were had outside the presence of the jury:)

THE COURT: Have a seat. Are we all here? All the jurors or everybody?

THE BAILIFF: Yes, sir.

THE COURT: What are we doing next?

MS. ROSENBLATT: More depositions. We could start with the first one of Dr. Spears. Is it okay if Stan reads the answers?

THE COURT: If Stan reads the answers?

MS. ROSENBLATT: Yes. He can do it. They won't get confused.

THE COURT: Well, I don't know. It seems--you know, I like things just to be in the order that they should be presented. You know, he's the main attorney on the plaintiffs' side.

MS. ROSENBLATT: Correct.

THE COURT: And they listen to voices and they get this essence of what is being said by the voice. I don't know anything. You don't want to read?

MS. ROSENBLATT: It's a lot of long answers and complicated words.

MR. HARDY: I don't know what the reason or need is for the switch at this point.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the Industry Documents Library: www.industrydocuments.ucsf.edu/docs/tqjl0001

It's not that the witness is male, because we haven't been concerned about that.

THE COURT: No. That's really not the problem. I happen to like the lawyer play the part of the lawyer and somebody else be a reader.

MS. ROSENBLATT: Because I'll mispronounce a lot of words.

THE COURT: Mispronounce it? I don't care. I mispronounce them.

MS. ROSENBLATT: Not as much as I do. Okay.

THE COURT: It just keeps it in the sequence.

Why don't you get one of your people from your office to come down and read it?

MS. ROSENBLATT: He has to leave right away. Otherwise I would have him.

THE COURT: I've been in trials in which some member of the defense teams, you know, on support staff, also was used to read.

Mr. Martinez?

MR. MARTINEZ: Don't go there, Judge. You don't want me to read those things. I might put the emphasis on the wrong syllable.

MS. ROSENBLATT: I said he can read.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Digitized by the Internet Archive in 2014 http://www.industrydocuments.ucsf.edu/docs/tqjl0001

John Hoag of our office is going to reschedule something. I asked him to read it, so I'm going to have him. Should he go up now?

THE COURT: Yes. Fine with me.

MS. ROSENBLATT: We'll do Cathy Ellis first because I have to conform another, Larry Spears.

THE COURT: Is this one that you took?

MR. ROSENBLATT: Yes, you took it.

THE COURT: Then he should be able to be familiar with the questions and the answers. At least the terminology involved.

MR. HOAG: I hope so.

MS. ROSENBLATT: Should he go up to the witness chair now or wait until the jury comes in?

THE COURT: We can bring the jury in and we can bring him up.

MR. ROSS: Which one are you going to do after that one, after Cathy Ellis?

THE COURT: Which one are you doing? Cathy Ellis?

MS. ROSENBLATT: Cathy Ellis. Right. We'll do another one of the technical ones.

MR. ROSENBLATT: How about Spears?

MS. ROSENBLATT: Okay. The next one

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/tqjl0001

will be Carchman.
THE BAILIFF: Bringing in the jury.
THE COURT: All right. Bring in the jury.
THE BAILIFF: Bringing in the jury.
(The jury entered the courtroom and the following proceedings were had:)
THE COURT: Okay, folks. Have a seat, please. We are going to do another deposition or two.
MR. ROSENBLATT: Today is deposition day. This is Dr. Cathy Lynn Ellis, who's--I'm looking for the date.
THE COURT: That was May 28?
MS. ROSENBLATT: Correct.
THE COURT: 1997.
MR. ROSENBLATT: Recently. Okay.
MS. ROSENBLATT: Senior vice president, research and development, of Philip Morris, USA.
THE COURT: All right. It's obviously--this is not Dr. Cathy Ellis.
MR. HOAG: No, Your Honor. I'm not.
THE COURT: Mr. Hoag has willingly volunteered.
MR. ROSENBLATT: Well, Mr. Hoag

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Digitized by the Internet Archive in 2007 with funding from Microsoft Corporation http://www.industrydocuments.ucsf.edu/docs/tqjl0001

actually took her deposition. He's from my office. We begin where?

MS. ROSENBLATT: Where the first tab is. Page 5.

MR. ROSENBLATT: Page 5.

(Portions of the deposition of CATHY LYNN ELLIS, Ph.D. were read to the jury as follows:)

Q. Could you state your name for the record, please?

A. Cathy Lynn Ellis.

MS. ROSENBLATT: 41, Line 16.

MR. HARDY: Page 23.

MR. ROSENBLATT: Page 23, Line 5.

Q. What is your current occupation?

A. I'm senior vice president of R&D.

Q. R&D means what?

A. Research and development.

Q. Research and development for what company?

A. Philip Morris, USA.

Q. And how long have you held that position?

A. Since October of 1996.

MS. ROSENBLATT: 41, Line 16.

MR. ROSENBLATT: 41, Line 16.

Q. What are your current duties in your current position at Philip Morris?

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Creative Commons www.industrydocuments.ucsf.edu/docs/tqjl0001

A. I'm the senior vice president of research and development, and in that capacity I'm basically involved in overseeing the research and development activities of Philip Morris, USA. It would include the development of products, product technologies, processes and providing information to the corporation.

Q. How many people do you supervise?

A. In the USA--

Q. Pardon me?

A. In the USA I would say just under 600.

Q. And do you supervise people in other parts of the world?

A. Yes.

Q. How many people?

A. Under 200.

Q. What other parts of the world do you supervise people in, in your current position?

A. Europe and Asia.

Q. And what are the occupations of the people that you supervise in other parts of the world?

A. They are scientists.

MS. ROSENBLATT: 45, Line 13.

Q. Now, the 600 people that you supervise in the United States, are they all scientists?

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/tqjl0001

A. They are scientists, engineers, product developers, yes, and then there's supporting individuals, obviously.
Q. The position that you're in now, who held it before you?
A. Dr. Ken Houghton, H-O-U-G-H-T-O-N.
Q. Why did he leave the position?
A. He retired.
Q. What month did he retire? What year and what month?
A. Last October, 1996.
Q. Okay. And what was the position you held immediately before the current position you're in?
A. I was the vice president of research and development. That was--that appointment was made in July of 1996, as a prelude to Ken's retirement.
Q. What do you mean, as a prelude to Ken's retirement?
A. Well, it was an indication that I would succeed him, and it was a transition position.
Q. Was it a position that was just formed for you that hadn't previously existed?
A. I would not characterize it that way.
Q. Was it a position that previously existed before you held it?

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the Industry Documents Library: www.industrydocuments.ucsf.edu/docs/tqjl0001

A. A position titled vice president of R&D previously existed, yes. But this was a situation where there was an interim transition within the organization, where the staff reported to me and I reported to Ken, so I was the only direct report for about three months.

Q. Prior to the vice president of research and development position, what was your position immediately prior to that?

A. Vice president of product development.

Q. And how long did you hold that position?

A. Approximately one year.

Q. From about July of '95 until '96?

A. Little bit before that, little bit more than a year.

Q. What were your duties as vice president of product development?

A. I oversaw product development and evaluation.

Q. What types of products?

A. Cigarettes.

Q. Anything else?

A. No.

Q. And what did you do immediately prior to that?

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support for www.industrydocuments.ucsf.edu/docs/tqjl0001

A. I was the director of research.
Q. Director of research for the entire company? You were the director of research for the entire company?
A. For Philip Morris, USA, yes.
Q. And what years did you hold that position?
A. Approximately three years.
Q. That would be from 1992 until '95; is that correct?
A. In that vicinity, yes.
Q. Did you supervise anyone in any other countries other than the United States at that time?
A. Yes.
Q. What other countries?
A. There was Europe, Belgium, and Germany.
Q. And who did you supervise? What positions did you supervise?
A. Scientists, about 150.
Q. In Europe, Belgium and Germany?
A. In Belgium and Germany.
Q. Okay. And prior to the position you held as director of research in 1992, what position did you have?
A. I was the director of applied research. That was at the point that research was split.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the UCSF Library
http://www.industrydocuments.ucsf.edu/docs/tqjl0001

Q. And you were director of applied research from when to when?
A. For approximately a year or two.
Q. From 1990 to '92?
A. In that vicinity.
Q. Okay. And when you say that was the year that was split, what do you mean?
A. We were--there were two directors of research; one a director of applied research and one a director of basic research.
Q. So around 1990 it was split into applied and basic. And you were put into the position of director of applied; is that correct?
A. That's correct.
Q. Okay. What did you do prior to 1990?
A. I was the manager of biochemical research.
Q. From when to when?
A. Approximately 1989.
Q. '89 to '90?
A. Yeah. It was approximately a two-year period of time, as I recall.
Q. And prior to '89, what was your position?
A. I was a section leader in the biochemical research division.
Q. From when to when?

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/tqjl0001

A. Approximately one year before that, so 1988.
Q. And prior to being section leader in the biochemical research division, what position did you hold?
A. I was technical coordinator for that same division.
Q. What years?
A. Again, for approximately one year.
Q. That would be?
A. '87.
Q. '87. Prior to '87, what position did you hold?
A. I was a project leader in that same division.
Q. For what years?
A. I didn't hear you.
Q. What years were you project leader?
A. I was project leader for--gee, probably about three years.
Q. That would be like from '84 to '87?
A. '83 to '87. Again, it depends on the beginning or the end of the year, yes.
Q. And prior to that, what was your position?
A. I was a research scientist, and I worked in the lab.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the Industry Documents Library: www.industrydocuments.ucsf.edu/docs/tqjl0001

Q. That was prior to 1982?
A. 1983, prior to 1983.
MS. ROSENBLATT: 51, Line 21.
Q. And the chemical studies or smoke condensate studies, did those include looking at nitrosamines?
A. Yes.
Q. And when did that begin?
A. That began probably in the '70s. But again, it was not a distinct group necessarily. It was a number of people within the smoke chemistry group.
Q. When you worked in the lab prior to 1983, when did you begin?
A. 1980.
Q. Was that the first position you held with Philip Morris in 1980?
A. Yes.
MS. ROSENBLATT: 54, Line 14.
Q. To your knowledge, when did Philip Morris first start measuring the level of nitrosamines in sidestream smoke?
A. Again, I'm not as familiar with the specific dates. Obviously we have had some research in sidestream smoke in our laboratory in Switzerland, but I would say certainly nitrosamines were looked at in mainstream smoke back in the '70s, and whether

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support for www.industrydocuments.ucsf.edu/docs/tqjl0001

or not sidestream was looked at at that time specifically, I'm not sure.

Q. What is the earliest time you're aware of that the nitrosamine level in sidestream smoke was looked at at Philip Morris?

A. Certainly in the '80s, I'm aware of that.

MS. ROSENBLATT: 56, Line 2.

Q. What was the work being done in Richmond on nitrosamines?

A. The work basically in the smoke chemistry group involved looking at basic methods, understanding how nitrosamines were formed, understanding then, potentially, how we could reduce them.

MS. ROSENBLATT: 58, Line 24.

Q. Okay. Were commercial cigarettes used to measure the level of sidestream, of aged sidestream smoke back in the 1980s?

A. Yes.

Q. And when commercial cigarettes were used back in the '80s on sidestream smoke, aged sidestream smoke measurements, did they also include nitrosamine measurement?

A. In some situations, yes.

Q. What situations? Under what situations were

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the Industry Documents Library: www.industrydocuments.ucsf.edu/docs/tqjl0001

commercial cigarettes used to measure nitrosamine levels from aged sidestream smoke?

A. There were a number of commercial cigarettes used in the sidestream chamber in Neuchatel, Switzerland, and there were a number of commercial cigarettes used in the chamber in Richmond.

Mainly those studies, though, were focused on sidestream visibility and looking at low sidestream papers and thereby measuring sidestream visibility reduction.

Q. The ones that were done in Richmond--when I'm saying ones, I mean the ones where they looked at commercial cigarettes--did they measure the nitrosamine level in the aged sidestream smoke?

A. In Richmond?

Q. Right.

A. For commercial cigarettes?

Q. Yes.

A. I have no recollection of that ever being done.

MS. ROSENBLATT: Page 75, Line 8.

Q. Were commercial cigarettes in Richmond, Virginia, to your knowledge, ever tested to find out their level of the NNK nitrosamine in sidestream smoke?

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the Industry Documents Library: www.industrydocuments.ucsf.edu/docs/tqjl0001

A. In sidestream smoke, not to my knowledge in Richmond. We had previous knowledge from Neuchatel.
Q. Now, you said in Neuchatel, Switzerland there were tests done of commercial cigarettes related to the sidestream smoke; is that correct?
A. Yes.
Q. And was it aged sidestream smoke?
A. Some of the work was aged, yes.
MS. ROSENBLATT: 92, Line 7.
Q. Well, how many additives or flavorants are in the Virginia Slims cigarette?
A. I don't know.
Q. Does that have any significance to you as a scientist?
A. In the context of what?
Q. In the context of knowing the interaction of numerous chemicals that are in the additives and how they interact with the tobacco smoke.
A. In the context of what end point? I'm not--I don't understand your question.
MS. ROSENBLATT: Line 25.
Q. The end point being--at least as I understand the term end point--the end point being when somebody involuntarily inhales the smoke, which includes the entire commercial cigarette, not just

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the Industry Documents Library: www.industrydocuments.ucsf.edu/docs/tqjl0001

the portions that are tested in a reference cigarette.

A. That information has been thoroughly gathered and reviewed on the individual ingredients that are used in cigarettes. That list has been put out publicly a couple of years ago, and a group of toxicologists have looked at the data associated with each ingredient of significance in this case and have basically said that as intended and as used that these should not present an issue.

Q. So did the toxicologists track how those numerous additives interact in a given commercial cigarette? Did they do that?

A. Scientifically that would be impossible to completely characterize all the processes going on in a combustion situation.

However, those toxicologists did review chemical and biological data that basically represented a characterization of those ingredients in the context and outside of the context of cigarette smoke.

Q. The toxicologists you're talking about were funded by the tobacco companies; is that correct? Is that correct?

A. I'm specifically not aware of how they were

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Creative Commons http://www.industrydocuments.ucsf.edu/docs/tqjl0001

funded. I know they were obtained by Covington and Burling, I believe.
Q. And who is that?
A. A law firm in Washington.
Q. And how do you know they were obtained by the law firm in Washington?
A. Because that is the group that puts together the ingredients list for the industry of health and human services according to the regulations every year.
MS. ROSENBLATT: 95, Line 1.
Q. Well, they don't put together a list of what specific additives are in each specific cigarette, correct?
A. Correct.
Q. So, for example, a Virginia Slims brand might have 100 additives that are cumulatively not the same additives that a Marlboro has?
A. Potentially.
Q. Well, you know that's correct?
A. No, I don't know that's true.
Q. You don't know what all the additives are that go in a cigarette?
A. I don't. I know what the total list is.
Q. The total list for all cigarettes

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support for www.industrydocuments.ucsf.edu/docs/tqjl0001

cumulatively, correct?
A. Yes.
Q. Which is not the same as the specific additives in a specific cigarette brand, correct?
A. That's correct.
Q. And how those different additives interact with each other in any particular cigarette is nothing you have looked at; is that correct?
A. I would think that's incorrect.
Q. Okay. So you have looked at how all the additives, for example, in a Virginia Slims interact with one another; is that correct?
A. No. I don't think that's possible, as I indicated, scientifically to look at in that complex environment, how all of those materials interact together.
MS. ROSENBLATT: 97, Line 5.
Q. Did the toxicologists look at the NNK level of aged sidestream smoke?
A. I don't know.
Q. So you don't know if that's something they looked at; is that correct?
A. No, I don't.
MS. ROSENBLATT: 115, Line 4.
Q. So your recollection is somewhere around

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support for http://www.industrydocuments.ucsf.edu/docs/tqjl0001

8,000 nanograms, 8- or 9,000 nanograms was the highest reading for NNK?
A. That's correct.
Q. And you don't know whether that was for one cigarette or not?
A. I'm not sure if the graph represented what was in the room or what was divided by the number--I believe it was divided by the number of cigarettes.
MS. ROSENBLATT: 118, Line 20.
Q. Okay. So what was Dr. Ferguson's role in the completion of the study?
A. His role was to interact with Neuchatel to get the study done.
Q. Who did he interact with at Neuchatel?
A. Primarily Jean-Jacques Piade, Dr. Piade.
Q. What is Dr. Piade's position?
A. He's, again, a senior technical chemist in Neuchatel.
Q. And who supervises him, Dr. Piade?
A. Dr. Suber, S-u-b-e-r.
Q. And who supervises Dr. Suber?
A. Dr. Kassman.
Q. Who does Dr. Kassman report to?
A. He reports to the operations individual in Lausanne, Switzerland, Klaus Schmidt.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Creative Commons www.industrydocuments.ucsf.edu/docs/tqjl0001

Q. Who supervises him?
A. The president of Philip Morris, Europe, or EU.
Q. Who is that?
A. At this time--there was just an organizational change, and the individual, I believe, is Mr. Hendrys. I'm not sure if that's correct.
MS. ROSENBLATT: 120, Line 20.
Q. When you decided to do this study, did you ask someone else if you could do it or did you just make the request on your own?
A. I did meet with some individuals and say this is what I wanted to do.
Q. What individuals did you meet with?
A. Chuck Wall and John Mulderig.
Q. Who are they?
A. Two lawyers in New York for Philip Morris.
Q. So you met with two Philip Morris lawyers before you actually implemented your request--
A. Yes.
Q. --and your study, correct?
A. Correct.
MS. ROSENBLATT: 122, Line--actually 121, Line 25. I'm sorry.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Creative Commons www.industrydocuments.ucsf.edu/docs/tqjl0001

Q. How long did you speak with these two attorneys?
A. I would say very briefly. Ten minutes.
Q. And after you spoke with them, what did you do?
A. I went to another meeting.
Q. With who?
A. I don't recall. At the time I was in New York, for another purpose, though.
Q. Well, how soon after you spoke with them did you implement your decision to request a study?
A. Either that day or the next day.
Q. Did you do that with a phone call?
A. I don't recall precisely how that happened at the time.
Q. You didn't do it in writing, though, correct?
A. No. I did not do it in writing.
Q. Okay. Why did you not put your request in writing?
A. I had no reason to.
Q. When you request a research study, do you usually put it in writing or do you usually just do it orally?
A. When I request something to be done, I

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support for www.industrydocuments.ucsf.edu/docs/tqjl0001

usually do not put it in writing.
Q. This was kind of a major undertaking, correct? Was this a major undertaking, to do this study?
A. I would--I mean, relative to other projects it may not be major, but it certainly isn't a day in the lab, obviously.
Q. What was the budget for this?
A. There was no specific budget for this.
Q. How much did it cost to do it?
A. I have not done that analysis.
Q. Who would be responsible for that analysis?
A. I don't know if it will ever be done.
Q. Does it come out of your budget?
A. No. Not necessarily. Although it may be charged back. I'm not sure how that will work.
Q. Well, who did you contact to get the ball rolling, to get the study done?
A. Again, I spoke with Robin Kinser. I also spoke, I believe, with Dr. Kassman, in other words, to ask whether or not that was something that we could do. In order to assess the feasibility of the study, I actually spoke to Dr. Kassman.
MS. ROSENBLATT: 126, Line 9.
Q. And did you inform Dr. Kassman about the

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support for this work was provided by the University of California, San Francisco Library and Center for Knowledge Management. http://www.industrydocuments.ucsf.edu/docs/tqjl0001

deposition of Dr. Morgan?
A. Yes.
MS. ROSENBLATT: 127, Line 4.
Q. Okay. Dr. Ellis, you were talking about the study that was done in Switzerland within the last couple of months, and you said that the sidestream smoke was aged over a period of five and a half to six hours; is that correct?
A. That's right.
Q. Did the NNK level increase each hour or did it stabilize at some point?
A. There was--if you would look at the graph of that data for every cigarette, you would see an increase over time. Whether or not there was a significant increase every hour, I don't think the data was analyzed that way.
Q. Did it look at each hour, for example? Did it do measurements after one hour?
A. Samples were taken at various points in time up to sometimes past five and half, six hours, and I'm not sure what the maximum was, but certainly it included five and a half hours.
And again, basically the level of NNK did increase up to five and a half hours, at which point it generally flattened out.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the Industry Documents Library: www.industrydocuments.ucsf.edu/docs/tqjl0001

Q. Was it higher after five hours than it was after one hour, the level of NNK?
A. Yes.
Q. Okay. What kinds of increments did they measure it in? Was it every 20 minutes, every hour, or what?
A. It was basically certainly not every 20 minutes. It was every hour, or maybe every hour and a half. They took certain time points along that curve.
MS. ROSENBLATT: 131, Line 2.
Q. Does cigarette smoking cause lung cancer?
A. Cigarette smoking has been and there is evidence that cigarette smoking is a risk factor. It is inappropriate to say based on technical evidence available that it causes lung cancer. And it's inappropriate to say that there isn't a possibility that it might be--it is inappropriate to say that it wouldn't possibly cause lung cancer. That is the definition of a risk factor.
MS. ROSENBLATT: Line 24.
Q. Well, does cigarette smoke cause any diseases?
A. I would have to say that there are associations between smoking and other diseases, but

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/tqjl0001

my answer would be the same.

MS. ROSENBLATT: 133, Line 21.

Q. Well, the reason that Philip Morris looks at the nitrosamine level is because they know that nitrosamines, tobacco specific nitrosamines, are carcinogenic compounds; is that correct?

A. Certain nitrosamines have been shown to be animal carcinogens under certain circumstances and certain conditions.

Q. Right. Tobacco has been known to contain carcinogenic compounds; is that correct?

A. Not all of them.

Q. Well, NNK nitrosamines; is that correct?

A. That has been known to be an animal carcinogen under certain circumstances and conditions.

Q. Now, on a package of cigarettes today the Surgeon General's warning will say that--at least on some of the packages. I know the warning may vary, but some of the cigarette packs will say smoking causes lung cancer, heart disease and emphysema.

Do you agree with the Surgeon General's warning that smoking causes lung cancer, heart disease and emphysema?

A. Technically speaking, in terms of having

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the Industry Documents Library: www.industrydocuments.ucsf.edu/docs/tqjl0001

data to prove the case--to prove the cause, no, I don't agree.

MS. ROSENBLATT: 147, Line 8.

Q. Is it your position that anybody that wants to quit can quit smoking?

A. Yes.

MS. ROSENBLATT: 151, Line 8.

Q. What does a Frank Statement to Cigarette Smokers mean to you?

A. It was a statement put out by the tobacco industry a number of years ago.

MS. ROSENBLATT: 152, Line 13.

Q. Now, has the industry position changed at all since the Frank Statement was written, concerning whether or not cigarette smoking causes any disease?

A. I'm not a representative of the industry per se, but I can say that based on my experience and knowledge, I have no knowledge that it has changed, based on where I sit.

MR. HARDY: That's it.

MS. ROSENBLATT: That's it for that deposition. And the next one.

MR. HARDY: Who?

MS. ROSENBLATT: Carchman. Richard

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the Industry Documents Library: www.industrydocuments.ucsf.edu/docs/tqjl0001

Carchman. This is another deposition you took by telephone.

MR. HOAG: Yes.

MR. ROSENBLATT: Dr. Richard Carchman, taken May 21 of this year, 1997.

(Portions of the deposition of DR. RICHARD CARCHMAN were read to the jury as follows:)

MS. ROSENBLATT: Page 3, Line 9.

Q. Would you state your name for the record, please?

A. Dr. Richard Carchman.

MS. ROSENBLATT: Page 9, Line 5.

Q. Your current employment, what is your current duty or title?

A. My title is group director, scientific affairs.

Q. For Philip Morris?

A. Philip Morris, USA.

Q. How long have you held that position?

A. Since the end of the year.

Q. So since around December of '96; is that what you mean?

A. Approximately, yes.

Q. What are your duties as the group director of scientific affairs for Philip Morris?

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support for www.industrydocuments.ucsf.edu/docs/tqjl0001

A. I am responsible for coordinating the scientific efforts related to environmental tobacco smoke around the world.

I also have been given the responsibility regarding smoking and health issues for the company.

I provide a supervisory role on certain aspects of product integrity questions.

Q. Who appointed you to this position, if that is the right word, appointed?

A. My boss is Dr. Cathy Ellis, who is the senior vice president of research and development. So, the appointment came through her office.

Q. Is that a newly established position?

A. Yes.

Q. So you are the first person that ever held that position, correct?

A. Yes.

Q. How did it come to be established, if you know?

A. Prior to me being named the group director, my title was the director of scientific affairs, which I had since 1992. At that time my responsibilities were environmental tobacco smoke service--environmental tobacco smoke science coordination and product integrity.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support for www.industrydocuments.ucsf.edu/docs/tqjl0001

With the change in my title as the group director, the product integrity aspect of my work from a day-to-day basis was transferred to another group. When that transfer took place, I was then assigned the additional responsibility associated with smoking and health issues from a scientific perspective.

Q. Let me make sure I understand. The position that you held beginning in 1992, prior to the current position, you were responsible for looking into and tracking all of the research on environmental tobacco smoke; is that correct?

A. That was part of my responsibility, yes.

Q. The product integrity. And what was the other thing?

A. There was no--it was product integrity and tracking and recommending scientific activities worldwide with regard to environmental tobacco smoke.

Q. The position or duties of tracking and recommending activities related to the environmental tobacco smoke research, was that a new duty or description in the corporation when you started that work in 1992?

A. No.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the Industry Documents Library: www.industrydocuments.ucsf.edu/docs/tqjl0001

Q. How do you know that it was not new?
A. The person that was doing this job was Dr. Robert Pages, who at that time was the director of science and technology. And he had been involved in the scientific part of the environmental tobacco smoke for many years, long before I came to the company.
When I became the director of scientific affairs, Dr. Pages reported to me.
Q. So prior to the time that you started that position in 1992, Dr. Pages had the responsibility related to tracking research related to the environmental tobacco smoke, correct?
A. Yes, sir.
Q. You said yes?
A. Yes.
Q. Do you know how long Dr. Pages had that position or that responsibility?
A. Both as director of science and technology and manager of science and technology, I would--I would say that he had it from at least the early '80s.
Q. All the way up until '92 when you took over that responsibility; is that correct?
A. That is correct.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support for www.industrydocuments.ucsf.edu/docs/tqjl0001

Q. How do you spell the last name?
A. P-a-g-e-s.
Q. Do you know if Dr. Pages is still working for Philip Morris today; is that correct?
A. He retired in 1992.
Q. At the time that you took that position in '92, he was still working for Philip Morris?
A. Yes.
MS. ROSENBLATT: Page 13, Line 14.
Q. When you took over the position in 1992, the responsibilities related to environmental tobacco smoke, did he provide you with any orientation or share with you the research and information that had already been done?
A. Yes.
MS. ROSENBLATT: Page 25, Line 24.
Q. Did you do any consulting work for the tobacco companies while at the university?
A. I was a consultant to Philip Morris prior to coming on board with the company in '89.
Q. What period of time were you a consultant to Philip Morris?
A. I want to say '86, '87. I have to think about that some more. It would be in the late '80s or mid to late '80s.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the Industry Documents Library: www.industrydocuments.ucsf.edu/docs/tqjl0001

MS. ROSENBLATT: Line 16.

Q. What was an example of the topic or the topics that you were hired to be a consultant on for Philip Morris?

A. It had to do with reviewing the ingredients that the company added to tobacco in the manufacture of cigarettes.

Q. What was your responsibility regarding the review of the ingredients?

A. It was to look at the published literature on the information and to give them my professional opinion as to any toxicological issues that might be associated or might arise as a consequence of how they were being used in the product.

Q. Did you prepare any written records for them?

A. No, I did not.

Q. So all of the information you provided to them was oral?

A. That is correct.

MS. ROSENBLATT: Page 30, Line 14.

Q. So there is nothing there, or there is no components in cigarettes which would include, of course, the tobacco in cigarettes that has anything that would have a toxicologically adverse effect on

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the Industry Documents Library: www.industrydocuments.ucsf.edu/docs/tqjl0001

health; is that correct?
A. Only if your question is in the cigarette. Now, if one were to light a cigarette and smoke the cigarette, you would be converting tobacco and the components in cigarettes to a wide variety of other materials.
In that situation, there are materials that are generated in the smoke that have been associated with a variety of toxicological effects.
Q. What are those materials?
A. In the smoke, after you light the cigarette, there's a large list of materials that goes on for quite a few pages that are listed within the International Agency for Research on Cancer, Monograph on smoking, and in the Surgeon General's report there are over 4,000 chemicals identified in the smoke, and some of them have been associated with toxicological effects.
Q. Which ones have been associated with toxicological effects, in your opinion?
A. There are several heavy metals and carbon monoxide and there are a variety of aldehydes and polyaromatic hydrocarbons, tobacco-specific nitrosamines, are some examples of the kinds of materials that have been associated with

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Creative Commons Attribution 3.0 Unported http://www.industrydocuments.ucsf.edu/docs/tqjl0001

toxicological effects.

MS. ROSENBLATT: 32, Line 23.

Q. The question was: In addition to those examples that you provided of the components of the tobacco smoke that have adverse toxicological effects on health, are there any others that you can think of?

A. There are a number of oxides of nitrogen that are produced via the combustion as well.

Q. What are oxides of nitrogen?

A. Nitrous oxide is probably the most or the more important example.

Q. Nitrous oxide?

A. Yes.

Q. Why is that the most important example?

A. I believe in terms of prevalence.

Q. What is the prevalence?

A. I don't know off the top of my head compared to the other oxides of nitrogen. On a weight basis, the material that we have by weight, the largest amount of material that has to do with the natural gases that are found in the atmosphere that we breath in terms of nitrogen, oxygen, carbon dioxide. By weight that is really--that is really what is produced in the largest amounts when one smokes

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the Industry Documents Library: www.industrydocuments.ucsf.edu/docs/tqjl0001

cigarettes.
Q. What are the examples, or what are all the tobacco specific nitrosamines? What are they called?
A. They are called tobacco specific nitrosamines and generally there are four main ones, NNN, NAT, NAD, and NNK. Those are abbreviations for the chemical names of those materials
Q. Are all three of those tobacco-specific nitrosamines, carcinogenic compounds?
A. First of all, any carcinogenicities demonstrated with tobacco-specific nitrosamines has only been done in certain animal models. Not all animals that have been exposed to the nitrosamines have been associated with the production of any kind of tumors or cancer.
Probably the one that many scientists believe is the most active in terms of carcinogenic activity in animals is NNK, and even NNK requires levels of administration that are hundreds of times higher than anything found in smoke, and it doesn't always produce cancer in all of the animal models that it has been tested in?
Q. When the nitrosamines are tested on animals, is each specific one individually tested, or is the

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the Industry Documents Library: www.industrydocuments.ucsf.edu/docs/tqjl0001

whole thing tested at the same time? How does that work? Generally speaking, the studies that have been published evaluate each individual tobacco-specific nitrosamine. Do they evaluate the effects of the combination of the nitrosamines acting together?

A. I am not aware of such data, though it might exist.

Q. Clearly, the nitrosamines do act together in tobacco smoke, correct?

A. I don't know what you mean by act together.

Q. They are all there together at the same time, right?

A. Yes. They are present at the same time though, at vanishingly small levels.

Q. What do you call vanishingly small levels of NNK nitrosamine?

A. Less than 100 nanograms per cigarette, so that is ten to the minus ninth in scientific notations so it would be a decimal point with eight whole numbers to the side of it. One billionth of a gram.

Q. One hundred nanograms per cigarette. Does Philip Morris do internal testing on the sidestream smoke of cigarettes?

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Digitized by the Internet Archive in 2014 http://www.industrydocuments.ucsf.edu/docs/tqjl0001

A. We have over the years evaluated nitrosamines in sidestream smoke, yes.
Q. Was that called nitrosamine project?
A. I have no idea what you are referring to. We have investigated tobacco-specific nitrosamines in sidestream smoke.
Q. For how many years?
A. Could you repeat the question?
Q. For how many years has Philip Morris investigated tobacco-specific nitrosamines in sidestream smoke?
A. Since the early '80s.
Q. What do you base that on?
A. Internal reports.
Q. Have you reviewed the internal reports?
A. I have reviewed the internal reports and I believe I have reviewed all of the internal reports.
Q. So the earlier internal report related to measurements of sidestream--of nitrosamines in sidestream smoke was in the early '80s?
A. To the best of my recollection, yes.
Q. Do you know whether they have any other reports available, anything earlier than the early '80s?
A. I don't know.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the Industry Documents Library: www.industrydocuments.ucsf.edu/docs/tqjl0001

MS. ROSENBLATT: 37, Line 20.

Q. Are they available, all the documents related to nitrosamines levels of sidestream smoke, are they all available to the general public?

A. I don't think so.

Q. Those are related to health effects, isn't it?

A. It can be.

Q. Why is it not made available to the general public?

A. Of what value would providing measurements of nitrosamine levels in sidestream be of value to the general public? I don't understand the question.

Q. You don't understand why it would be of value to the general public to know what measurements Philip Morris has taken of the tobacco-specific nitrosamine levels of sidestream smoke, is that correct?

A. Those levels have been published by other scientists in both peer-reviewed journals and in governmental or semi-governmental reports whether it's the Surgeon General or IARC, I-A-R-C, or published papers. It is available to the public.

Q. Are you saying then that the Philip Morris

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/tqjl0001

research isn't the cutting edge, but it is just equal to or greater than what is available to the general public? Is that correct?

A. No. I think that you are totally mischaracterizing my answer. I fail to see how being on or not on the cutting edge has anything to do with making this information public or not.

Q. So if Philip Morris had information that other people do not have about the health effects of tobacco smoke, you fail to see why Philip Morris should share that with the public?

A. No. As I said in response to an earlier question about doing it, I told you that we strongly encourage the publications in peer review journals of all of the research that we support, including work on nitrosamines.

MS. ROSENBLATT: 41, Line 6.

Q. I want to go back to ask you about the measurements of the nitrosamines, tobacco-specific nitrosamines in sidestream smoke. How many scientists were working on that in 1980 for Philip Morris?

A. I don't know. I wasn't there. I can't answer that question.

Q. Do you know an individual named William Ray

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Digitized by the Internet Archive in 2007 with funding from Microsoft Corporation http://www.industrydocuments.ucsf.edu/docs/tqjl0001

Morgan was working on that topic while he was a scientist at Philip Morris?

A. I do, and he did have responsibility in that area.

Q. What were the nature of his responsibilities?

A. He was an analytical chemist and his responsibilities including measuring tobacco-specific nitrosamines in smoke.

MS. ROSENBLATT: Now go to Page 50, Line 16.

Q. Now, when the nitrosamines of sidestream smoking was measured, what kind of cigarettes did they use to measure that smoke? Philip Morris.

A. The kind of cigarettes that are normally used are a variety of reference cigarettes.

Q. When you say reference cigarettes, what do you mean?

A. There are standard reference cigarettes that over the last 40 or so years have been created to reflect different tar and nicotine delivery in the marketplace. Whether they are manufactured at the University of Kentucky, or by the National Cancer Institute or by an individual company, they represent specific specifications in terms of tar

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support for www.industrydocuments.ucsf.edu/docs/tqjl0001

and nicotine delivery and cigarette construction elements and are usually designated as 1R, 12R, 1R4F, as examples, and the F designates.

So a 1R4F cigarette is a filtered cigarette that delivers about 10 milligrams total particulate matter that may be 11 milligrams of tar by FTC or ISO standard tests. These are reference cigarettes that anybody in the world can use and evaluate and know that they are starting with the same material standard tests. They are reference cigarettes that anybody in the world can use in carrying out evaluations and know that they are starting with the same materials. So it is a very important scientific control for any evaluation.

Q. Really, it is not the same as a real world cigarette, is it?

A. A real world cigarette?

Q. The kind you would by in grocery stores?

A. You mean commercial cigarettes?

Q. The kind that you buy in a grocery store is not the same kind that you--

MR. ROSENBLATT: That doesn't make sense.

Q. The kind that you buy in a grocery store is not the same kind that you buy in a grocery store,

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/tqjl0001

right?
A. Right. Not the same.
Q. It doesn't include the additives or the flavorants, does it?
A. Generally speaking, it doesn't.
Q. Is there anything else that it doesn't include other than the additives and the flavorants?
A. I am trying to think. The major difference is the fact that they are not cased or flavored, yes, that's correct.
Q. Is there anything else that is different about them other than that they don't include the additive or flavorants?
A. I don't believe so. I am trying to think.
Q. You said about five hundred plus additives and is that what you said?
A. No. What I said is that the publicly released industry list of 599 ingredients that are used by the six companies. For example, Philip Morris has somewhere around 250 packings and some of the ingredients on that list which is a list that has been submitted to the federal government since 1985 are found in those packings.
Q. So about five hundred cumulative additives accumulatively placed in some cigarettes at the same

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/tqjl0001

time; is that correct?
A. That is not correct.
Q. Maybe a couple of hundred places in one cigarette and a couple of hundred places in another cigarette, and is that what you are saying? Is that what you're saying?
A. Not that much.
Q. Do you know?
A. Yes, I do.
MS. ROSENBLATT: Page 60, Line 11.
Q. Doctor, are you aware that the level of tobacco-specific nitrosamines in tobacco smoke increases as the tobacco smoke ages, correct?
A. I am aware that under certain experimental extraordinarily high levels of sidestream smoke, that one can find under certain of these conditions transient increases in the certain tobacco-specific nitrosamines do occur, yes.
Q. Well, Philip Morris did that research numerous times in the 1980s establishing that the age of the tobacco smoke approximately 60 minutes, it would increase the N-nitrosamines, NNK nitrosamine levels by a factor of three or four, correct? By that I mean, three or four times what it was before it was aged, correct?

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/tqjl0001

A. As I said, there were investigations, and I don't know, but numerous or several investigations carried out in which cigarette sidestream smoke was concentrated in laboratory experimental chambers. As a function of time analytical measurements were taken, yes, and there were transient increases in certain of the tobacco specific nitrosamines including NNK.

Q. After the smoke was out of the tobacco and just sitting there, and smoke, it picked up two or three or four times the number of nitrosamines, correct?

A. Well, again, with extraordinarily high levels of sidestream smoke in laboratory chambers, there was a transient, that is, a non-persistent change in certain of the nitrosamine levels, yes.

Q. Specifically, the NNK nitrosamine levels increased by a factor of three to four, correct?

A. The transient level increased and if one looks at one point in time, the answer is yes. And if one looks at the entire experiment, it increases and decreases and then stabilizes.

Q. Now, those are the reference cigarettes which didn't include the additives, correct?

A. Yes.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/tqjl0001

Q. The general protocol was to always use those reference on production cigarettes, correct?

A. This was a scientific study and you cannot do a scientific study when you're dealing with commercial cigarettes where the innate variabilities that would be associated with use of any production type cigarettes. No, they did not have additives. They did not have additives.

Q. Meaning that they actually tested cigarettes, right?

A. The reference cigarette, the only time that you would have flavorants or casings in a reference cigarette was to test the effects of that flavorant or that casing on a cigarette and on the smoke.

MS. ROSENBLATT: 63, Line 12.

Q. Did they ever, during the time that they tested the sidestream smoke, and the nitrosamine levels in sidestream smoke, I'm talking about the time frame from early 1980s to 1992, did Philip Morris, to your knowledge, ever test commercial cigarettes?

A. Not that I am aware of.

MS. ROSENBLATT: 67, Line 7.

Q. Actually, now you have read the deposition of Dr. Morgan, correct?

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Digitized by the Internet Archive in 2014 http://www.industrydocuments.ucsf.edu/docs/tqjl0001

A. I read a deposition from Dr. Morgan, yes.
Q. That deposition Dr. Morgan talked about having tested Virginia Slims cigarettes, correct?
A. Correct.
Q. That is correct?
Q. Now, those cigarettes he tested would have included additives, correct?
A. They might have. I don't know. I don't know what he tested.
Q. You don't know what he tested because he was ordered to shred the documents, correct?
A. In his testimony, he alludes to that. I have no information on this at all. This incident that Dr. Morgan refers to I believe occurred prior to my employment with the company.
Q. As you sit here today, have production cigarettes, to your knowledge, ever been tested by Philip Morris to be looked at for nitrosamine levels in sidestream smoke from the production cigarettes?
A. I thought I answered the question. Not to my knowledge.
Q. Now, Dr. Morgan did test 30 Virginia Slims cigarettes and he discovered that the Virginia Slim cigarettes contained NNK nitrosamine level that was ten times as high as the NNK nitrosamine levels in

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/tqjl0001

the reference cigarettes, didn't he? Isn't that correct, sir?

A. Again, I am not aware of that information.

MS. ROSENBLATT: 71, Line 16.

Q. Well, if, in fact, he really did get the results, it would certainly be a result for testing, wouldn't it?

A. Absolutely. I believe that Dr. Ellis has undertaken some studies in Neuchatel to try to test that.

MS. ROSENBLATT: 70, Line 25.

Q. Neuchatel?

A. Yes. In Switzerland where the nitrosamine work is carried out.

Q. Is that part of Philip Morris?

A. Yes. The R&D facility is in Neuchatel, Switzerland which is part of Philip Morris.

Q. I thought you just told me that you didn't know of any research done on the production cigarettes to find out the nitrosamine levels of sidestream smoke?

A. What I said to you in response to your question is you asked me if anybody had carried out any work on production cigarettes, and the answer was no.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the Industry Documents Library: www.industrydocuments.ucsf.edu/docs/tqjl0001

My answer to this question is that Dr. Ellis has initiated some work to investigate Dr. Morgan's allegations. I am waiting, I think, to see the final results of such study. I am waiting.

Q. When did he start initiating that work?

A. I don't know. Recently, I believe.

Q. After he was deposed?

A. I don't know. I don't know the date of Dr. Morgan's deposition. I don't really know the date that Dr. Ellis initiated the study.

Q. Did Dr. Ellis start doing this within the past few weeks?

A. I don't know the date in which he initiated the study.

MS. ROSENBLATT: That's the end.

THE COURT: Is that it? Okay. Let's take a break, folks. It's 3:00. What do we have left so we know scheduling-wise.

MS. ROSENBLATT: Another scientist.

THE COURT: Yes. Which one?

MS. ROSENBLATT: Coggins.

THE COURT: Coggins. I don't have him.

MS. ROSENBLATT: I don't think we did. And then we also have Spears and Orlowsky. So another hour's worth or so. An hour and 15 minutes.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Digitized by the Internet Archive in 2014 http://www.industrydocuments.ucsf.edu/docs/tqjl0001

THE COURT: Okay. I have Orlowsky and I have Spears. Okay.

MS. ROSENBLATT: We haven't heard back in terms much the additional counter designations in Celemajer, so that will be tomorrow.

(A brief recess was taken.)

(The following proceedings were had outside the presence of the jury:)

THE COURT: Have a seat, please. Before we begin, there's been an inquiry by the jury of the clerk because the jury checks are late in coming again. We tried to work on it the first time and we had a problem and we are trying to get those checks. We got the checks now, right?

THE CLERK: Joe is trying to pick them up now.

THE COURT: And they wanted me to hear about it, so I guess I'll bring them in. I'll hear their gripes and groans, and then we'll see what he can do about it. Other than that, I don't know what to tell you. We tried. Finance is holding up the works somewhere, and we don't know what is actually delay it.

Bring the jury out and we'll find out.

THE BAILIFF: Bringing in the jury.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the Industry Documents Library: www.industrydocuments.ucsf.edu/docs/tqjl0001

(The jury entered the courtroom and the following proceedings were had:)

THE COURT: Folks, my clerk tells me that you are concerned about the checks.

JUROR NO. 293: Your Honor, we are concerned because from the very beginning of the jury selection process we were informed that starting with week three we would be paid every week, I think one or two weeks behind, in terms of the time we had served.

So as far as we only received two paychecks, I believe, for the first two weeks, and there's been just some inconsistency in terms of when we might get paid, how much.

THE COURT: I haven't figured out when you're supposed to get paid, when payday is.

JUROR NO. 293: I think it was every Friday.

JUROR NO. 132: We were told after the third week, the check would be in the mail after the third week every week following.

THE COURT: Which day of the week.

JUROR NO. 132: Every Friday.

THE COURT: So you're behind how many.

JUROR NO. 293: Three.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the Industry Documents Library: www.industrydocuments.ucsf.edu/docs/tqjl0001

THE COURT: Three actual checks.
JUROR NO. 293: Yes.
THE COURT: Really?
JUROR NO. 132: They were supposed to bring one check over.
THE COURT: They brought one over the last time I though.
JUROR NO. 132: At that time they paid us two weeks.
THE COURT: That was for two weeks and you have not received anything since then?
JUROR NO. 132: No.
THE COURT: I'm glad you told me. I didn't know. I'll do what I can.
JUROR NO. 132: We really appreciate it.
THE COURT: It's like the IRS.
JUROR NO. 132: yeah.
THE COURT: But I'll do what I can, but this is something that I'm glad you told me about. All right. Andy is the one we have to talk to first. Okay.
We are going to do another depo?
MR. ROSENBLATT: Yes. Now, Judge, just so there's no confusion about this, this is

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support for www.industrydocuments.ucsf.edu/docs/tqjl0001

Alexander Spears. Now, the jury has already seen him by video on a deposition that was taken of him in April of this year. Now, this is an earlier deposition taken April 26, 1994, when he occupied a different position with Lorillard Tobacco Company. He was not then president and CEO. So it's the same man, but a different deposition. Okay. I gave the date. S-P-E-A-R-S. Alexander Spears.

(The deposition of ALEXANDER SPEARS was read to the jury as follows:)

MS. ROSENBLATT: Page 4, Line 23.

MR. ROSENBLATT: Page 4?

MS. ROSENBLATT: Line 22.

Q. For the record, please state your full name.

A. Alexander White Spears, Sir.

Q. And what is your address?

A.[DELETED]

MS. ROSENBLATT: Page 13, Line 1.

Q. And you were initially hired to do what?

A. Initially hired to, I guess, carry out investigations with respect to the composition of tobacco smoke.

MS. ROSENBLATT: Page 50, Line 23.

Q. In your present position at Lorillard, are

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the Industry Documents Library: www.industrydocuments.ucsf.edu/docs/tqjl0001

you actively involved in research?
A. What do you mean by actively involved in?
Q. Doing anything similar to what you used to do when you were director of research?
A. No. I have many more functions now than I had when I was director of research.
Q. Well, tell me about some of your primary functions now.
A. Well, I have research and development activities report to me. And as such, I'm aware of the projects being worked on, the budget. Fiscal responsibility of the organization is mine. Generally approve hiring of individuals. And, as I say, the overall direction of research. Administration of the research organization is basically my responsibility. Approval of extraordinary items that may come up in terms of expenditures during the year, again, would be my responsibility. Other responsibilities include our central quality control function, our engineering function, and our--I have a senior vice president report to me who is responsible for all of our manufacturing and purchasing, distribution functions and labor relations. I also have responsibility for development of our international business. That is

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/tqjl0001

about it.

MS. ROSENBLATT: Page 52, Line 17.

Q. Are you in any other foreign countries other than Japan?

A. Yes, but not as far along as we are in Japan.

Q. Which other countries?

A. We have sold cigarettes in Turkey. Some African countries, Hong Kong, Australia. African countries are Guinea, Guinea-Bissau and Guinea Conakry. Starting effort in Senegal. In the Middle East, the UAE, Israel, and Saudia.

Q. Do you have plants---

A. Some in Russia.

MS. ROSENBLATT: Page 81, Line 21.

MR. ROSENBLATT: LINE 21?

MS. ROSENBLATT: Yes.

Q. Do you know what Buerger's disease is? Have you ever heard of that?

A. Yes.

Q. What is that?

A. It is a circulatory disease which some people have an unusual reaction, I guess, to nicotine and perhaps other things that reduce circulation in the extremities.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the Industry Documents Library: www.industrydocuments.ucsf.edu/docs/tqjl0001

Q. It is a disease that has been associated with smoking in the literature?
A. To some extent, yes, particularly nicotine.
MS. ROSENBLATT: Page 89, Line 24.
MR. ROSS: No. That's out. I'm sorry. That's in. You're right.
THE COURT: What line?
MS. ROSENBLATT: Line 24.
THE COURT: Oh, 24.
MS. ROSENBLATT: 89.
Q. What is your definition of confounders?
A. Any variables that come into the statistical analysis that are not being accounted for that change the risks which have to do with other variables that are not accounted for in the studies.
The example I gave you was diet. In other words, there are other associations that occur with the spousal measure of exposure, and these are termed confounders.
Q. What do you mean by dosimetry?
A. Dosimetry is the level of exposure of a nonsmoker to environmental tobacco smoke.
Q. You think, for example, a non-smoking---
MR. HARDY: No.
MS. ROSENBLATT: That's in.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Digitized by the Internet Archive in 2014 http://www.industrydocuments.ucsf.edu/docs/tqjl0001

MR. HARDY: Is it? I'm sorry. Excuse me.

Q. You think, for example, a nonsmoking flight attendant who has been a flight attendant for ten or 15 years before the smoking ban went into effect and gets lung cancer, you would say that her exposure to secondhand smoke had nothing to do with her lung cancer, and when asked what did cause her lung cancer, you would say you didn't know, right?

A. That's correct. But that's different from what I was talking about in the EPA report.

Q. I understand that.

A. That is workplace exposure.

Q. But your opinion, it's the same?

A. Yes, it is. But when I was talking about confounders, I was talking about the in-home exposure measure which is spousal smoking.

Q. What are the confounders for the flight attendants?

A. I don't know that there are confounders for flight attendants. I haven't seen any epidemiological studies that specifically deal with flight attendants. So unless you are referring to a epidemiological study, the confounder is not relevant to talk about.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support for www.industrydocuments.ucsf.edu/docs/tqjl0001

Q. So why would you reject that at hand that the secondhand smoke in the scenario I gave you could be responsible for the flight attendants' lung cancer?

A. No. 1, the dosimetry in my judgment would be far too low to support any theoretical notion it could result in disease.

MS. ROSENBLATT: Page 95, Line 2.

Q. Has anyone asked you to be an expert in this case when this case goes to trial on the issue of whether or not secondhand smoke causes disease?

A. I haven't been asked anything.

Q. Do you feel qualified to testify as an expert on that subject, the subject being whether secondhand smoke causes disease?

A. I think I have a lot of expertise on the subject, yes.

Q. From what source do you have expertise on that subject? Lorillard has never done any research on that.

A. On environmental tobacco smoke? We have certainly sponsored research and conducted research on methodology. As I say, sponsored research.

Q. And by virtue of what, reading that research, you would feel qualified to give expert

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Digitized by the Internet Archive in 2014 http://www.industrydocuments.ucsf.edu/docs/tqjl0001

testimony in this area?
A. It's not all reading. It is also reviewing research proposals on the subjects that relate to environmental tobacco smoke.
Q. What exactly have you done on that?
A. I have reviewed hundreds of proposals, request for funding.
Q. In what capacity?
A. As a board member of the Center for Indoor Air Research.
Q. Who is the head of that?
A. Who is the head of it?
Q. Yeah.
A. I'm the chairman of the board currently.
MS. ROSENBLATT: Page 97, Line 14.
Q. How long has the Center for Indoor Air Research been in business?
A. About four or five years.
Q. How much money did they award in the last couple of years for research?
A. Their budget is about $5 million a year.
Q. Have you been a decisive player in deciding who gets the research grants and who doesn't?
A. I'm a player. I wouldn't say I'm a decisive player.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support for www.industrydocuments.ucsf.edu/docs/tqjl0001

Q. Who is more decisive than you or equally decisive?
A. There is a Scientific Advisory Board that reports to the director. And they review proposals and make recommendations to the board, and the scientific director for funding. The ultimate decision is the board of directors.
Q. And you are chairman of the board?
A. Currently, yes.
Q. Who else is on the board?
A. Members of the companies that support the Center. They are Charles Green, Richard Carchman, myself, Dan Hecht. Couple more names I have forgotten. They have just come on the board.
MS. ROSENBLATT: Page 99, Line 14.
Q. Who funds the center, the tobacco companies?
A. Yes.
Q. All of them?
A. No. Lorillard, Philip Morris and Reynolds and recently Swedish Tobacco Company.
Q. A Swedish Tobacco Company.
A. The Swedish Tobacco Company.
Q. That was the name of it, the Swedish Tobacco Company?
A. I think it is different than that.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the Industry Documents Library: www.industrydocuments.ucsf.edu/docs/tqjl0001

Swedenska Tobaca.

Q. The Center for Indoor Air Research seems to function pretty much like the Council for Tobacco Research. Are they similar?

A. No. It is different.

Q. In what ways is it different? They both have the Scientific Advisory Board. They are both funded by the tobacco companies. They both look over grant applications and decide who to grant them to. So in what ways are they different?

A. The Center for Indoor Air, that is not what I just described. The Center for Indoor Air has a Scientific Advisory Board reporting to the executive director. And they review places for funding and make their recommendations to a board of directors. And the board has the final determination as to what is funded.

The Council for Tobacco research, there is a Scientific Advisory Board that independently determines what is to be funded. It does not come to the board for determination, but rather it is determined essentially by the Scientific Advisory Board. So in that sense, it is a very different organization.

Q. In terms of the research that is funded

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Digitized by the Internet Archive in 2007 with funding from Microsoft Corporation
http://www.industrydocuments.ucsf.edu/docs/tqjl0001

through the Center for Indoor Air Research, is that exclusively relating to the issue of secondhand smoke?

A. No. The mission of that organization is indoor air quality. The only thing excluded from that mission specifically are asbestos as an indoor air issue, and radiation as an indoor air issue.

Q. I think I understood you. But I want to be sure about this.

The board of directors for the Center of Indoor Air Research has the final say as to which applications are granted?

A. Are funded.

Q. Whereas in the Council for Tobacco Research, the Scientific Advisory Board has the final say on who is funded?

A. Essentially, yes. The only nuance here is if you had a grant in the Council for Tobacco Research where you were at essentially the end of funds available, there is some discretion by the scientific director who is also a member of the SAB, Scientific Advisory Board, at the tobacco research. So there is a little discretion when they are out of funds whether they do one rated a little higher or lower as to specifically where their interests lie.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the Industry Documents Library: www.industrydocuments.ucsf.edu/docs/tqjl0001

MS. ROSENBLATT: Page 102, Line 17.

Q. Why was the Center for Indoor Air Research formed?

A. To conduct research into the area of indoor air quality.

Q. Why couldn't the mechanism of the Council for Tobacco Research accomplish that just as easily? Why did a separate entity have to be set up?

A. I don't know that there is a specific reason why there had to be a separate entity other than to say the determination of this entity would focus on indoor air. And that was I think an expedient way to set it up with its own set of scientific advisors and a little different organizational approach than CTR.

Q. Has the Center for Indoor Air Research ever funded research into the issue of the air quality on airplanes?

A. I believe there was one study that was conducted through the Center of Indoor Air and that was a number of years ago.

Q. Who conducted that or what institution?

A. It was conducted in Europe and it was basically the SAS Airline involved in the study.

Q. Has that been published anywhere?

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support for www.industrydocuments.ucsf.edu/docs/tqjl0001

A. I believe it has.
Q. Do you know where?
A. No. I don't remember the journal.
Q. When the subject of banning smoking on airplanes was being discussed, before that ban went into effect, what role did you have in that dispute?
A. I don't know what you mean by role.
Q. Well, I assume you were against the ban?
A. SAB had no reason for it from a health point of view. Is that what you're asking?
Q. No. I'm asking what you did. When I say your role, what you did in that dispute in terms of hiring lobbyists or hiring people to attempt to influence Congress so they wouldn't pass that legislation which you were opposed to?
A. We are a member of the Tobacco Institute and those who spoke at the hearings regarding that on our behalf would have been members of the Tobacco Institute.
MS. ROSENBLATT: Page 110, Line 11.
Q. Were you involved with the Lorillard patents for artificially increasing nicotine?
MR. ROSENBLATT: Pardon me?
MS. ROSENBLATT: That's the end of the sentence. We took out the rest of the sentence.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Digitized by the Internet Archive in 2014 http://www.industrydocuments.ucsf.edu/docs/tqjl0001

Here. It should be marked.
Q. Were you involved with the Lorillard patents for artificially increasing nicotine?
A. There is no Lorillard patent for artificially increasing nicotine. There is a Lorillard patent that relates to nicotine, and it relates to the transfer of nicotine from one material to another.
MS. ROSENBLATT: Page 111, Line 20.
Q. That is being done commercially?
A. We are not employing that patent.
Q. Did you ever?
A. No.
MS. ROSENBLATT: Now Page 114, Line 13.
Q. Does any Lorillard advertising state, quote, low nicotine?
A. I don't think so. But I'm not 100 percent sure. I think most of them say low tar, if there is a mention at all. It may say low tar and nicotine, but I do not recall one ever saying low nicotine.
Q. Why not?
A. It is kind of a nonsensical claim to me.
MS. ROSENBLATT: 115, Line 8.
Q. How frequently do you have contact with the Council for Tobacco Research?

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Stanford Library http://www.industrydocuments.ucsf.edu/docs/tqjl0001

A. I'm a member of the board. The board meets twice a year.
Q. How long have you been a member of the board?
A. I don't remember exactly, but four or five years, maybe six.
Q. Have you ever been involved for the Council for Tobacco Research assessing applications and deciding whether they should be funded or not?
A. No. I have not.
Q. Do you ever attend meetings of the Scientific Advisory Board of the Council for Tobacco Research?
A. In my capacity as a board member?
Q. Any capacity.
A. Back a large number of years ago I was a member of a subcommittee, I guess, of the CTR which was known as the industrial technical committee. And as such, I sat for a period with the Scientific Advisory Board at their meetings and listened to their deliberations. As such, I saw proposals at that time. That was probably in the early to late '70s maybe.
MS. ROSENBLATT: Page 153, Line 19.
Q. When did you first hear of special projects?

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Digitized by the Internet Archive in 2007 with funding from Microsoft Corporation http://www.industrydocuments.ucsf.edu/docs/tqjl0001

A. I can't be real specific. But quite probably in the late '60s or thereabouts, maybe early '70s.

MS. ROSENBLATT: Page 159, Line 3.

Q. Why don't you mark this packet as plaintiffs' next numbered exhibit.

I'm going to be handing you several pages entitled CTR Special Projects, which gives the name of the researcher, the project description, the budget, the date approved, and ask you if looking at that list refreshes your recollection about some of the specific undertakings of special projects.

A. Yes. I recall some of these projects.

MS. ROSENBLATT: Page 160, Line 15.

Q. Who was in charge of special projects?

A. What do you mean by in charge?

Q. When I asked you who was in charge of Lorillard in Greensboro, who would that be, you?

A. Yes.

Q. I'm asking you who was in charge of special projects.

A. I have described I think a funding, how they were funded by the general counsel. I guess in that sense, you would say they were the funding authorization.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support for www.industrydocuments.ucsf.edu/docs/tqjl0001

In terms of administratively transferring funds to these people against certain criteria, whether they be calender dates or whatever, that would have happened through the administrative people at CTR. And I think occasionally there were staff members at CTR who may have reviewed progress or gone into investigators' laboratories on a site visit.

MS. ROSENBLATT: Page 189, Line 8.

Q. Have you ever been part of the selection process of the head of the Council for Tobacco Research?

A. Yes, sir, I have.

Q. Are you still, at the present time? In other words, if someone was a candidate to become a new director of the Council for Tobacco Research, would you be involved in the interviewing process?

A. Not automatically so. In all probability.

Q. As a practical matter, who is the director now?

A. James Glenn.

Q. What, if anything, do you---

A. He is the president of the organization.

Q. Of the CTR?

A. CTR.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support for www.industrydocuments.ucsf.edu/docs/tqjl0001

Q. What, if anything, did you have to do with the decision to hire him?
A. I believe I interviewed him, and participated in setting forth the job description.
Q. Who decided to hire?
A. I think collectively the companies or representatives of the companies pay dues to support CTR.
Q. Including yourself?
A. Yes.

MS. ROSENBLATT: Pages 195, Line 6.

Q. As a physician, what is Glenn's area of expertise or his specialty?
A. He is a surgeon as an area of specialty.
Q. Do you know what kind of surgeon? Orthopedic?
A. No, no, no, no. I believe he is a thoracic surgeon.
Q. Do you know Harmon McAllister?
A. Yes, I do.

MS. ROSENBLATT: Page 199, Line 42.

Q. Who is C.H. Judge?
A. Former president of Lorillard.
Q. Where is he now?
A. Retired.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Digitized by the Internet Archive in 2014 http://www.industrydocuments.ucsf.edu/docs/tqjl0001

Q. Living where?
A. Seabrook Island, if that is the island off Charleston.
MS. ROSENBLATT: Page 229, Line 18.
Q. Mark the next as plaintiffs' next exhibit.
Exhibit No. 15.
This is a letter, Dr. Spears, from you to Dr. E.L. Wynder dated March 17, 1962, Plaintiffs' Exhibit 15. I'm handing it to you.
A. '62?
Q. You recognize it? Do you accept the fact that this is a letter from you?
A. Let me see the back. Looks like it.
Q. By the way, when is the last time you had any contact with Dr. Wynder? Many years ago or recently?
A. Not recently.
Q. Let me read from this letter, March 17, 1962. The letter is to Dr. E.L. Wynder, secretary of epidemiology, division of preventative medicine, Sloan-Kettering Institute, 410 East 68th Street, New York, New York.
"Dear Dr. Wynder: Both Dr. Jensen and I have read the preliminary draft of Dr. Hoffmann's and your paper. We both feel that an enormous

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Digitized by the Internet Archive in 2014 http://www.industrydocuments.ucsf.edu/docs/tqjl0001

quantity of experimental work of excellent quality is presented, and that all phases of the study on selective filtrations of phenols are adequately covered. We find no open questions in the conclusions of the experimental studies, and consider your work above reproach as usual."

Who is Dr. Jensen?

A. I described him earlier as the person who hired me. And he was I think the title research supervisor for Lorillard.

Q. Continuing with the letter. Quote: "We have penciled in connections and comments which may be placed in three categories. One, errors in grammar; two, suggested rephrasing for clarity; and three, suggested omissions and questionable statements. Categories one and two require no further comment. But we wish to explain the most extensive suggested omission.

"We do not think that the paper will be accepted without a chemical definition of experimental plasticizer, since you regard your results on these samples as very significant, which they are. You state that any effect of aging on experimental plasticizer may be eliminated by antioxidants and that this is currently under

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Digitized by the Internet Archive in 2007 with funding from Microsoft Corporation
http://www.industrydocuments.ucsf.edu/docs/tqjl0001

investigation. In a publication from an academic, non-profit organization, it seems a necessity to define and explain the action of the experimental plasticizer and why an antioxidant may inhibit any effects on aging which are not shown in the data. However, from a commercial point of view, this is not advisable. Although we have submitted data concerning polyether filters to our legal representatives for preparation of a patent, we cannot expect to be granted this patent for several years, and during this time polyether filters could be used by any cigarette manufacturer.

"Further, if you publish the composition of the plasticizer, it would be regarded as public property unless Lorillard can show otherwise. This could involve public recognition of our cooperative efforts which would be regarded as poor publicity by both the Institute and Lorillard."

What did you mean by that?

A. By everything you read?

Q. No. "But this could involve public recognition of our cooperative efforts which would be regarded as poor publicity by both the Institute and Lorillard," that one sentence.

A. Exactly what it said.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the Industry Documents Library: www.industrydocuments.ucsf.edu/docs/tqjl0001

Q. Poor publicity in what sense?
A. For a Sloan-Kettering Institute investigator to be collaborating with the tobacco company.
Q. In what way was he collaborating with the tobacco company?
A. That these were filter cigarettes obviously we had prepared and had been analyzed by Dr. Hoffmann. In effect, they had confirmed -- they were confirming the data that I had already generated on these filters.
Q. But how would that be poor publicity for Lorillard, a guy from Sloan-Kettering backing you up?
A. Only in the sense of I guess--I don't know what I had in mind at the time.
Q. This would be good publicity for Lorillard?
A. Not necessarily.
Q. If you think of it in today's terms. Here you got a well-recognized guy from a prestigious institution confirming---
A. I guess only in the context that Wynder had published articles which claimed health effects of cigarettes, and possibly by some sort of joint publication, publicity could associate the two of us as having similar views.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Digitized by the Internet Archive in 2014 http://www.industrydocuments.ucsf.edu/docs/tqjl0001

Q. And you certainly didn't want to be associated with what he had done on creating tumors on what, mice?

A. Certainly not with my views being the same, no, in terms of extrapolation of that information to human beings.

Q. Did you extrapolate those findings, the mice findings, with growing tumors, with human beings?

A. I believe he has.

Q. Okay. You go on to say in this letter, quote, "We fully realize this omission detracts from the practical aspects of selective filters, but from the academic and theoretical viewpoint little, if anything, is lost. The explanation of other questionable statements have been written on the manuscript. Our best wishes for a rapid acceptance and publication of the manuscript."

Basically the thrust of this letter is asking him to omit something?

A. That we were in the process of patenting from the experimental detail of the work that we had put into the filters as an experimental end.

Q. Did he omit it?

A. I don't remember. I don't know.

Q. Was it published?

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the Industry Documents Library: www.industrydocuments.ucsf.edu/docs/tqjl0001

A. Was what published?
Q. The article you were referring to, talking about a preliminary draft of his and Hoffmann's paper?
A. I presume so, but I don't really remember.
Q. And you don't remember where it was published, if it was published?
A. That wouldn't be hard to find.
Q. And you don't remember whether or not it incorporated your suggestion about the omission or whether it didn't?
A. I don't.
MS. ROSENBLATT: Page 240, Line 20.
Q. Are you a member of the technical study group under the cigarette safety act?
A. It is abandoned.
Q. But you were?
A. I was a member.
Q. What did the group do?
A. That was under the 1990 act?
Q. I don't know.
A. There were two groups. One was the tobacco study group. The other was the tobacco advisory group.
Which are you referring to?

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the Industry Documents Library: www.industrydocuments.ucsf.edu/docs/tqjl0001

Q. This was from 1968 to 1979.
A. No. You are talking about the Tobacco Working Group, TWG.
Q. What did that group do?
A. That was a group at the National Cancer Institute that I referred to earlier, and it was an advisory group relative to a National Cancer Institute program whose purpose was to produce or provide the direction for less hazardous cigarette.
Q. Did it accomplish that objective?
A. Not in my judgment, because I didn't accept the initial premise that cigarettes at that time were hazardous.
Q. You got some kind of an award from Philip Morris earlier in your career?
A. Yes.
Q. What was that for?
A. I think it was an award for distinguished achievement in tobacco science.
Q. Was it for a specific achievement or just general?
A. No. This was an award that Philip Morris gave to recognize researchers in the area of tobacco science. And it was an annual award. There have been a large number of awards over time.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/tqjl0001

MS. ROSENBLATT: Line 18.
Q. Is benzene a carcinogen?
A. Benzene is classified as a carcinogen, yes.
Q. Is benzene in any Lorillard cigarettes?
A. In the smoke or in the cigarette?
Q. In tobacco?
A. In the tobacco, no.
Q. In the smoke?
A. There is some benzene in all tobacco smoke. There is benzene everywhere in our environment.
MS. ROSENBLATT: All right. That's it for this deposition.
THE COURT: Last one, folks.
MR. ROSENBLATT: Promise.
THE COURT: For today. Okay. Go ahead.
MR. ROSENBLATT: All right, Judge. This is the deposition of Martin Orlowsky. He's an executive with Lorillard. This deposition was taken October 16, 1993.
(The deposition of MARTIN ORLOWSKY was read as follows:)
MS. ROSENBLATT: Page 4, starting on Line 7 through 18.
Q. State your name, please.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Digitized by the Internet Archive in 2014 http://www.industrydocuments.ucsf.edu/docs/tqjl0001

A. Martin Orlowsky.
Q. And your address?
A. [DELETED]

Q. How far is that from Manhattan?
A. [DELETED].
Q. What is your business or occupation?
A. I'm employed by Lorillard Tobacco Company.
Q. In what capacity?
A. I'm executive vice president of marketing.
MS. ROSENBLATT: Page 6, Line 2.
Q. What did you do before that?
A. I worked for Nabisco Brands, part of RJR Nabisco.
MS. ROSENBLATT: Line 17.
Q. Before that?
A. Before that I was employed by R.J. Reynolds Tobacco Company.
Q. Doing what?
A. My last position there was executive vice-president, marketing and sales.
Q. How long did you work at R.J. Reynolds altogether?
A. R.J. Reynolds Tobacco Company?
Q. Yeah.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support for www.industrydocuments.ucsf.edu/docs/tqjl0001

A. Nine years.
Q. And what different positions did you hold there during those nine years?
A. I was executive vice-president of marketing and sales, I was senior vice-president of marketing, I was vice-president of marketing, I was director of marketing services, and I was media director.
Q. What did you do before R.J. Reynolds?
A. I worked for an advertising agency.
MS. ROSENBLATT: Page 16, Line 14.
Q. Specifically, does cigarette smoking cause disease?
A. No. I do not believe that.
Q. Based on what?
A. Based on what I've heard, read and seen.
Q. Have you read any of the Surgeon General's reports on smoking and health?
A. I don't think I've read them in depth, no.
MS. ROSENBLATT: Page 36, Line 11.
Q. What does research and development at Lorillard consist of?
A. I'll need more specifics.
Q. You've got the department.
What do they research? What do they develop?

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Digitized by the Internet Archive in 2007 with funding from Microsoft Corporation http://www.industrydocuments.ucsf.edu/docs/tqjl0001

A. They develop cigarette products and do associated research.
Q. Research in the sense of ascertaining whether a particular product will sell well with the public?
A. No.
Q. Research along the lines of whether the product will taste good or give pleasure?
A. They do research related to taste, yes.
Q. Any other kind of research that you're aware of?
A. No.
Q. I mean, for example, is any research done on the issue of whether either cigarette smoking or environmental tobacco smoke causes or contributes to causing disease?
A. I'm not aware of any.
MS. ROSENBLATT: Page 65, Line 4.
Q. What is the Tobacco Institute?
A. It's a trade association.
Q. Have you ever had any dealings with the Tobacco Institute?
A. Yes, I have.
Q. And tell me about those.
A. I briefly was part of the communications

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/tqjl0001

committee on the Tobacco Institute.
Q. During what time frame?
A. In the years somewhere in the early '80s.
Q. And what did you do in that position?
A. I was part of the group that dealt with different position--different communications positions as part of the Tobacco Institute.
Q. Does the Tobacco Institute provide spokespersons when the New York Times or the Wall Street Journal wants a comment from a representative of the tobacco industry?
A. I guess so.
MS. ROSENBLATT: Page 72, Line 17.
MR. ROSS: No. That's out.
MR. ROSENBLATT: That's where we are.
MS. ROSENBLATT: Is that out, Judge? I have it as in, Page 72, Line 17. I might have marked it wrong.
THE COURT: I didn't mark this copy.
MR. HARDY: We have that out.
THE COURT: Let me just read it and I'll figure it out. Out.
MS. ROSENBLATT: Out?
THE COURT: Out.
MS. ROSENBLATT: 85, Line 4.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Digitized by the Internet Archive in 2014 http://www.industrydocuments.ucsf.edu/docs/tqjl0001

Q. Have you ever spoken to anyone in the tobacco industry while you were with R.J. Reynolds or now with Lorillard who stated to you that he or she does believe cigarette smoking causes disease?
A. I have not encountered anyone like that.
MS. ROSENBLATT: Page 88, Line 9.
Q. Is environmental tobacco smoke a human carcinogen?
A. Not as far as I know.
Q. Has the Environmental Protection Agency of the United States concluded that environmental tobacco smoke is a human carcinogen?
A. I believe they have.
Q. What is the information that you have--other than your personal beliefs, what is the factual information that you have which causes you to conclude that they are wrong?
A. Some knowledge of the basis upon which they reached that conclusion.
Q. What is your knowledge of the basis upon which they reached that conclusion?
A. That some statistical studies were initiated, and based on the results of those statistical studies this organization concluded that.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support for www.industrydocuments.ucsf.edu/docs/tqjl0001

Q. That's about the extent of it? No more specific than that?
A. As far as I know.
Q. To your knowledge, is Lorillard doing any independent research on the issue of whether cigarette smoking causes cancer?
A. Not to my knowledge.
Q. To your knowledge, is Lorillard Tobacco Company doing any independent research on the question of whether environmental tobacco smoke causes or contributes to causing cancer and other diseases?
A. Not to my knowledge.
Q. To your knowledge, is any tobacco company anywhere in the United States doing such research?
A. Not to my knowledge.
MS. ROSENBLATT: Page 97.
MR. ROSS: Line 3.
Q. What would Lorillard do if, for example, the state legislature of New York, just to pick one state, was considering a ban on smoking in all restaurants? How would Lorillard go about fighting that kind of legislation?
A. If Lorillard decided to deal with that issue, it would be through the Tobacco Institute.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Digitized by the Internet Archive in 2014 http://www.industrydocuments.ucsf.edu/docs/tqjl0001

MS. ROSENBLATT: 98, Line 2.
Q. You would agree that generically Lorillard, as well as every other tobacco company, is certainly against the banning of smoking in public facilities?
A. Lorillard is in favor of allowing smokers and nonsmokers to have opportunities to exercise their predilections.
MS. ROSENBLATT: Page 101, Line 9.
Q. Are you briefed in some fashion at Lorillard as to the official position of Lorillard on all health-related issues, such as banning smoking in buildings?
A. We are made aware of the company's viewpoints on different issues.
MS. ROSENBLATT: Line 17.
Q. Through what?
A. Through meetings or discussions.
Q. Who attends these meetings?
A. It varies.
MS. ROSENBLATT: That's it for this deposition. We have another one, but we'll do that tomorrow.
THE COURT: Another what?
MS. ROSENBLATT: We have Coggins, but we can do that with Celermajer tomorrow.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/tqjl0001

THE COURT: I don't think I've gone over Coggins with you. I have?
MS. ROSENBLATT: Yes.
MR. ROSS: There were no objections to him.
THE COURT: Let me see which one it is. Just give it to me.
MR. ROSS: That was the one with no objections.
MS. ROSENBLATT: That was the unique one.
THE COURT: Well, it's relatively short.
MS. ROSENBLATT: That's very brief.
THE COURT: Let's go ahead and do this one then.
MS. ROSENBLATT: Okay.
MR. ROSENBLATT: This is a telephone deposition that Mr. Hoag took May 22 of this year, 1997, of Christopher Coggins. Okay. Page 4?
MS. ROSENBLATT: Yes, Line 24.
(The deposition of CHRISTOPHER COGGINS was read to the jury as follows:)
Q. Could you state your name for the record, please?

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Digitized by the Internet Archive in 2014 http://www.industrydocuments.ucsf.edu/docs/tqjl0001

A. My name is Christopher Richard Emerson Coggins.

MS. ROSENBLATT: Page 6, Line 23.

Q. What is your current position?

A. Senior vice-president, science and technology, Lorillard Tobacco Company.

Q. How long have you had that position?

A. Five months.

Q. What was the position you held immediately prior to the position you have now?

A. Principal scientist, R.J. Reynolds Tobacco Company.

Q. Principal scientist, RJR?

A. That's right.

MS. ROSENBLATT: Page 8, Line 17.

Q. And did anyone from Lorillard ultimately interview you for the position?

A. Yes.

Q. Who interviewed you?

A. The CEO, Dr. Spears.

MS. ROSENBLATT: Page 9, Line 9.

Q. And what are your duties now as vice-president of science and technology at Lorillard?

A. My first set of duties are to establish

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Digitized by the Internet Archive in 2014 http://www.industrydocuments.ucsf.edu/docs/tqjl0001

priorities for research and development. My second set of responsibilities are to continue my previous position with Reynolds in terms of maintaining knowledge of the scientific literature on environmental tobacco smoke as related to lung cancer and cardiovascular disease. And my third position, third responsibility, is to maintain liaison with external technical committees. There are other minor things, too.

MS. ROSENBLATT: Page 10, Line 16.

Q. One of your job responsibilities now is to do the same thing you did for R.J. Reynolds when you were principal scientist at RJR; is that correct?

A. Yes. That's correct.

Q. How long did you hold that position of principal scientist at RJR?

A. Approximately five years.

Q. So from early in 1982 until--well, did you start in 1991? Was that what it was?

A. I'm sorry. Did I start what?

Q. Start the position as principal scientist with RJR? Was that '92 or '91?

A. I think that was '92.

Q. Approximately what month?

A. August.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the Industry Documents Library: www.industrydocuments.ucsf.edu/docs/tqjl0001

Q. So from approximately August of 1992 until five months ago, you were principal scientist at RJR, correct?
A. That's correct.
MS. ROSENBLATT: Page 24, Line 5.
Q. What were your job responsibilities as principal scientist at RJR other than the one you already mentioned which was the second duty you have as vice-president of science and technology at Lorillard?
A. 1992 until I left Reynolds, my principal position was to understand the literature related to environmental tobacco smoke and cardiovascular disease and lung cancer, as I already mentioned.
I did have some in-house research responsibilities. I had some out-of-house research. These were very small. I also assisted other groups within the Reynolds family.
Q. So this position related to research concerning environmental tobacco smoke and lung cancer and heart disease, you started that position in August of 1992.
Prior to August of 1992, did anyone have that same position to do research related to environmental tobacco smoke and lung cancer and

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the University of California
http://www.industrydocuments.ucsf.edu/docs/tqjl0001

heart disease?
A. The answer is that there was a division within the research and development department that had some people doing some work on this. But it was relatively part-time. I had been moved from a laboratory position to kind of a desk position where I continued work I had already been doing on epidemiology. So prior to this position, I had already been doing epidemiology in conjunction with some lab work.

Basically, what happened in August of 1992 is the lab work went to colleagues and I was allowed to expand my previous interest in epidemiology.

Q. So this position was a newly-created position in August of 1992; is that correct?

A. Not quite. I was promoted from a previous position as principal scientist and moved into a slightly different department.

Q. Did that exact position as a full-time job exist prior to you holding that position?

A. Largely.

MS. ROSENBLATT: Page 34, Line 7.

Q. Does cigarette smoking by human beings cause lung cancer?

A. I don't know. I don't know the answer to

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the Industry Documents Library: www.industrydocuments.ucsf.edu/docs/tqjl0001

that.
MS. ROSENBLATT: Page 77, Line 13.
Q. Do you smoke cigarettes?
A. No.
Q. Have you ever smoked cigarettes?
A. No.
Q. Ever tried smoking cigarettes?
A. Yes.
Q. How old were you?
A. Ten or 11.
MS. ROSENBLATT: That's it.
THE COURT: That's it?
MS. ROSENBLATT: That's it.
THE COURT: I told you it was short.
Okay. All right. You did a good job today, folks. Come back tomorrow at 9:00, the usual time. Usual restrictive instructions: Don't watch anything, listen to anything, read anything, talk about anything related to this case or anything about it. Thank you. I think your checks are here.
Did you give them yet, Olga?
THE CLERK: Yes.
THE COURT: You gave them the checks?
THE CLERK: No. I haven't given them.
THE COURT: She will give them in the

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the Industry Documents Library: www.industrydocuments.ucsf.edu/docs/tqjl0001

jury room. Let me know if they cover the right period.

Tomorrow is what?

MS. ROSENBLATT: We have got Celemajer, Jenkins. There are going to be some objections. Jenkins is another deposition.

THE COURT: Have you done Jenkins yet? No?

MS. ROSENBLATT: We haven't read that yet. It's one that we gave them yesterday, the designations to. Yesterday morning.

MR. ROSS: You said you were going to try to reduce your cross designations.

MS. ROSENBLATT: No. I was going to look at Celemajer tonight--it's a long deposition and his answers were long--to see if I could perhaps shorten a six-page answer to two pages, but then--I don't know, because it may just result in so much dispute over it, that it won't really save time. I was going to do it to save time. I was going to try it like that. If they have any designations to my cross-designations, they will let us know.

THE COURT: What are we going to do about Mr. Russ? He wanted to leave.

MS. ROSENBLATT: Yes. He asked that we

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/tqjl0001

wait until Monday to argue anything that would relate to his client.

THE COURT: Okay.

MS. ROSENBLATT: And he also asked in terms of exhibits not to discuss the B&W exhibits or argue Liggett because he wants to be here, and I said okay.

THE COURT: That's fine.

MR. RUSS: If that's okay with the Court.

THE COURT: I have no problem with that. Sure.

MR. RUSS: Thank you.

MS. ROSENBLATT: And the other thing is, if there was time to go over Booberg, we want to prepare that because that's a videotape which we could do overnight. I don't know if you had a chance to look at it.

THE COURT: Well, I did most of it. I think I have a problem with just one aspect, considering what it's all about, and the main thrust of it as I saw it. There were two articles that he talked about. Both articles appeared in two separate publications. Same articles basically. One he was familiar with based upon the fact that he

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Digitized by the Internet Archive in 2007 with funding from the Legacy Tobacco Documents Library
http://www.industrydocuments.ucsf.edu/docs/tqjl0001

was present at the board meeting where they reached the decision and the other he wasn't, I guess. I'm just trying to remember. So much of this stuff has been gone through.

No. I think that his testimony is admissible. I'm not going to strike his testimony. I think it has a value and it's relevant and it's material to some of the issues. Some of it is not. Any reference to that second publication I think is not because he had no contact with that decision-making process.

MS. ROSENBLATT: Okay.

THE COURT: But the first one he would. So that's where I was going and I got into the cross-examination. There's extensive cross-examination on that issue.

MR. MOODHE: May I be heard on that, Your Honor?

THE COURT: Sure.

MR. MOODHE: With respect to the articles that we are referring to, and I think we do have copies of the articles which may help the Judge in forming his decision, one set of articles, as I understand it, was a pro and a con viewpoint expressed as a set of editorials.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Digitized by the Internet Archive in 2014 http://www.industrydocuments.ucsf.edu/docs/tqjl0001

MS. ROSENBLATT: It was attached to the deposition.

MR. MOODHE: They should be attached. I'm not sure if they are attached to the copy for the Judge.

MS. ROSENBLATT: They were. They are tabbed, yes.

THE COURT: Let's see. Okay. Let's see what we are talking about here. Which one of these are we talking about? Significant scientific literature? I'm not sure I got it.

MR. SCHNEIDER: Well, Your Honor, attached to the deposition as Exhibit 2---

THE COURT: Maybe it's on the deposition itself.

MR. SCHNEIDER: Right. They are attached to the back of there. You can see them tabbed.

THE COURT: I saw them separate. The tabs are there. I got up to Page 83 of my review.

MR. SCHNEIDER: What is attached in terms of articles, there is an article of the Thoracic Society saying we are going to have an ethical debate whether it's published or not published. There are two articles. One saying yes,

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support for www.industrydocuments.ucsf.edu/docs/tqjl0001

publish, and one saying don't publish.
THE COURT: I'm not sure I understand. I'm not following you.
MR. SCHNEIDER: All right.
THE COURT: In this edition here---
MR. MOODHE: It would be Exhibit 2 for identification.
THE COURT: All Right. Let's take a look at that. I have Document Entitled Announcement. Is that what that is?
MR. SCHNEIDER: That's actually---
MR. MOODHE: Announcement is what I think you have indicated you would have been familiar with.
MR. SCHNEIDER: Your Honor, just for orientation purposes, there are two sets of exhibits. Exhibit 1 is the plaintiffs' set of exhibits. Those are a set of---
THE COURT: No. I'm looking at defendants.
MR. SCHNEIDER: All right. And there it begins with an article entitled "Should Our Journals Publish Research Sponsored by the Tobacco Industry?"
MR. MOODHE: That is Defendant's 1.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/tqjl0001

MR. SCHNEIDER: That's Defendant's 1.
THE COURT: Wait a minute. I have the wrong thing here.
MS. ROSENBLATT: The first five are ours and then I guess theirs start with No. 1 after it in terms of the tabs.
THE COURT: Not according to what I'm reading here. Maybe I've got the wrong one. Mine looks like it says on the exhibit list, on Defendant's No. 1, "Xerox copy of editorials published in the American Journal of Respiratory Cell & Molecular," and so forth and so on. Oh, I see. I see it. Okay. This one says, "Should Our Journals Publish Research?" Is that the one you're talking about?
MR. SCHNEIDER: Yes.
THE COURT: I'm with you now.
MR. SCHNEIDER: All right.
THE COURT: Let me just see something here. On Page 53, this is the one that he's talking about as far as ATS is concerned: "Were you present when this decision was made?
"When the motion was taken--when the motion was received and moved and taken at the board meeting? Yes, I was present." And he's part of a

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the Industry Documents Library: www.industrydocuments.ucsf.edu/docs/tqjl0001

hierarchy.

But as far as the other publication is concerned, he didn't know anything about it, although he wears a dual hat.

MR. SCHNEIDER: Well, actually, during his examination and that exhibit you were looking at, Your Honor, Exhibit 1, that's entitled, "Should Our Journals Publish Research Sponsored by the Tobacco Industry?" that is an introductory article saying we are going to have an ethical discussion of it.

Then there's two articles, one entitled, "The Search for Untainted Money," and the other one is, "The Smoking Lamp Should Not Be Lit in ATS/ALA Publications."

During his direct examination, plaintiff showed him the second one, "The Smoking Lamp Should Not Be Lit," and in the cross-examination he was shown the article in favor of publishing the tobacco industry articles. Certainly, if any part of this article is going to be put in, the whole thing should be put in.

THE COURT: I can't find those. Let me see. Maybe it's just all part of---

MR. SCHNEIDER: If I can approach,

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Digitized by the Internet Archive in 2007 with funding from Microsoft Corporation
http://www.industrydocuments.ucsf.edu/docs/tqjl0001

maybe we can compare, Your Honor.
THE COURT: Wait a minute. Let me see what's going on here. This is "The Smoking Lamp."
MR. SCHNEIDER: And that's the one they gave him.
THE COURT: And the other one is "The Search for Untainted Money."
MR. SCHNEIDER: Yes. That's all part of the article of the Thoracic Society Journal.
THE COURT: Okay. Yes. I think it's appropriate to have his testimony on those issues.
MR. MOODHE: Your Honor, if I can.
THE COURT: What is the prohibition?
MR. MOODHE: Well, the issue is that notwithstanding the fact that he said he was present at the board meeting, when he was questioned about the actions of the board of directors---
THE COURT: That has nothing do with it. I read that. Can you see the piece of paper? Were you there for the vote?
He was present in the room. He doesn't have to look at every document or know everything that they made the decision on. If he was in an open meeting. If he wasn't in the room, it would be a different story. So I don't really have any problem

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Digitized by the Internet Archive in 2014 http://www.industrydocuments.ucsf.edu/docs/tqjl0001

with that approach.

MR. MOODHE: He made it quite clear that he didn't know what was in the minds of the board of directors.

THE COURT: But he was there. He doesn't have to know why they voted, but he was there. He doesn't have to know what is in their minds. And the end result is what I know and the end result is what I voted. That's all he has to worry about.

MR. MOODHE: There is a predicate issue here which the whole thing is hearsay anyway.

THE COURT: I disagree.

MR. MOODHE: The fact that this society or journal or anybody else took a position one way or the other is hearsay. It's being offered for the truth of something, of the reasons why they took. He can't even explain what those reasons are. There already is testimony over our objection that the Thoracic Society did take this position.

THE COURT: Yes, I know.

MR. MOODHE: That came out in cross-examination of Dr. Houston, so that fact is already in the record. He can add nothing more to that other than to say it again.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Creative Commons www.industrydocuments.ucsf.edu/docs/tqjl0001

THE COURT: I can understand the position that they are worried basically about a conflict of interest. That's what they are talking about. There is nothing in the record--I haven't read the articles, but nothing in the deposition to indicate that anybody did anything wrong other than it didn't look good to have research funded by somebody from the tobacco companies, therefore, we would like to disassociate ourselves from that. That's the whole essence of this whole thing.

MR. MOODHE: Then the question I have for Your Honor--because that is exactly what they say. They say it's an ethical and moral issue. It's not because they refute the research program or any particular research and decided there was something wrong with it scientifically. Then we have a real question of relevance. It's not relevant for this jury to decide whether or not---

THE COURT: Well, people want to know or are going to have to understand why. And if it's strictly an ethical thing, fine. At least that explains it. They may be left with a different impression if you leave it alone.

MR. MOODHE: I don't see that you revisit something that might be in error by coming

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Creative Commons www.industrydocuments.ucsf.edu/docs/tqjl0001

back to it again.

THE COURT: I don't think it compounds the error. I think it explains and clarifies the error, because when you listen to everything they say, they say, look, we are supposed to be an independent research organization and we are supposed to have a role. Now, if what we are doing is funded by people that we are looking at, that looks to be like a conflict. Maybe we ought to disassociate with so-and-so. Let's go independent. That's basically what it says.

MR. MOODHE: I agree with Your Honor that's what it says, but it strikes me it's not material or relevant to the issue of whether anything was done by these defendants in a fraudulent way.

THE COURT: There's nothing that I know that you don't know about this case because I haven't been involved in all the discovery. I'm just listening to the snips and whatever I hear from the depositions. I came away with the impression that somebody in the Thoracic Society decided, oops, we better disassociate with the tobacco industry because there is information that is being produced that we don't want a part of. That's the impression

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the Industry Documents Library: www.industrydocuments.ucsf.edu/docs/tqjl0001

that I got based on the snippets that came in. If you want to keep it with the jury, that's fine, too, but I think it needs clarification and I think it clarifies it. I'm just trying to tell you from my view what I see.

MS. ROSENBLATT: Have you indicated which portions or how you're ruling, because I know they had quite a few objections.

MR. ROSENBLATT: In terms of the editing process.

MS. ROSENBLATT: We tried to edit this over.

THE COURT: Up to Page 83 I have, but I didn't get through 83 on, but that's generally cross-examination.

MS. ROSENBLATT: If you can advise us what to take out, I can begin the editing of that, at least have that portion of it done so we can play part of it.

MR. SCHNEIDER: Your Honor, understanding your ruling and preserving our objection to it, I think when you look through the deposition he talks a lot more than just the subject that we were talking about. I guess if we limit the deposition strictly to that subject, I think we can

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/tqjl0001

cut it down and make it shorter. He wanders all over the place, in Virginia, and travels all through that state, and I don't think that is within his designation. It's certainly outside of what Your Honor said was---

MS. ROSENBLATT: I don't think he's been limited by the Court and I think like any other witness, he's allowed to explain his experience, his background.

THE COURT: Let me just look and see what I did.

MS. ROSENBLATT: Okay. Why don't you just advise us what you took out.

MR. SCHNEIDER: I want to make the point that he was designated for that specific point, not to go through his travels in Virginia.

THE COURT: I don't have a designation.

MR. SCHNEIDER: The specific point is the fact that the Thoracic Society voted in '95 not to accept tobacco-funded articles. That was his sole designation. That is it. This deposition should be limited accordingly.

MS. ROSENBLATT: It's an extensive discovery deposition. He had other opinions, other thoughts. Most of their designations go beyond the

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Digitized by the Internet Archive in 2014 http://www.industrydocuments.ucsf.edu/docs/tqjl0001

specific two-paragraph designation and I--okay.
THE COURT: Okay. Well, you go back over his career. I don't have a problem with that. Let me see what I marked here. Let's see.
He did a lot of work with the American Lung Association in Virginia. He did a lot of stuff there. Let's see where I start. I start with the first exclusion on Page 17, because we had gotten into--I think what we were talking about is some lobbying problems here starting with Page 17, Line 19, and the next page to Page 19.
MR. SCHNEIDER: You have to take all of that out. There's an answer on Line 19. You mean to take the prior question as well of 17?
THE COURT: Yes.
MR. SCHNEIDER: Line 16 on 17 down through Page 19?
THE COURT: Yes.
Page 22---
MS. ROSENBLATT: What line? The question on Line 16 at 17 seems to relate and explain a follow-up question.
THE COURT: Where are you?
MS. ROSENBLATT: Page 17. You had indicated Line 19 down, and then you said to go to

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/tqjl0001

the question above, but the question above seems to relate to his prior answer restrictions.

THE COURT: Well, they are opposed. Are they opposed to any regulations? Yes. Then you wanted to know specifically. I just want to leave it general.

MS. ROSENBLATT: Okay. So, in other words, you want to start out at 16?

THE COURT: At 16, yes.

MS. ROSENBLATT: And then the next page through 18?

THE COURT: Through 19.

MS. ROSENBLATT: Okay.

THE COURT: Page 19, Line 15.

MR. SCHNEIDER: Page 19 through Line 15?

THE COURT: Yes. Page 22---

MR. SCHNEIDER: Your Honor, if I may.

MS. ROSENBLATT: We'll take out the colloquy, of course.

THE COURT: Oh, yes.

MR. SCHNEIDER: If I may, Page 19, it says, "During the time that you were working in Virginia, what, if anything, were you able to accomplish concerning the rules and regulations

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support for www.industrydocuments.ucsf.edu/docs/tqjl0001

regarding public smoking?"
This man was designated as a fact witness on what the Thoracic Society did with respect to funding of articles, not what happened in Virginia concerning rules and regulations regarding public smoking, and I would renew, again, the objection to limit him to what he was designated to.
THE COURT: All right. I heard you. Overruled.
22, Line 12. Actually, 13 goes into the restaurants and all that, and I don't think it was necessary to do that. So 13 through 25 and Page 23 through Line 6.
MS. ROSENBLATT: So Page 23 we are taking what out? I'm sorry.
THE COURT: Page 23, Line 6.
MS. ROSENBLATT: Okay.
THE COURT: And I didn't think it was necessary to go much further than that.
Okay. The rest is out.
MR. SCHNEIDER: The rest is out on 23?
THE COURT: On 23.
And Page 24, Line 5 through 25. Page 25 is out.
MR. SCHNEIDER: It's excluded?

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Digitized by the Internet Archive in 2014 http://www.industrydocuments.ucsf.edu/docs/tqjl0001

THE COURT: Excluded. Out, out, out.
MR. SCHNEIDER: You're just telling us what is excluded. I'm sorry.
THE COURT: Sir?
MR. SCHNEIDER: I was apologizing. You were just telling us what is excluded, correct?
THE COURT: Yes. Unless I say, "In."
MR. SCHNEIDER: Okay. Good. I'm picking up on that distinction.
THE COURT: 25 is out. 26 is out. 27 is out. Talking about children here. 28 is out. 29 is out. 30 is out. 31 is out. 32 is out, 33, 34, 35, vending machines and all that sort of stuff, down to Line 15 on Page 36.
Then you're asking him if he was--just like everybody else. It's really not necessary to get into addiction with him. So that's out, Page 36 all the way. Page 37, Page 38, 39, all of that is out. Let's see. And 40. 41 down to Line 6. Let's see. No. That's out, too. Through Line 12. Okay. 41, it would start with Line 13. And that would be in, 13 on.
I'm on 42 and 43. All of that is okay.
Let's see. Let's go to the next out. 49, this is the editorial issues. That's where I

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Digitized by the Internet Archive in 2014 http://www.industrydocuments.ucsf.edu/docs/tqjl0001

stopped. Yes. This is where it got a little hairy. I was trying to figure out about this editorial.

MS. ROSENBLATT: I think he's familiar with it as being executive director of the American Thoracic Society, and he's talking about all the steps and the individuals involved and the whole process, how this came about.

THE COURT: Yes. Basically, that's all it really says.

MS. ROSENBLATT: It's very factual.

MR. SCHNEIDER: I would renew our objection on hearsay grounds. He is saying one of the members of the society, Munzer, was reading the article and he became concerned. He was personally very concerned about this, and that's all obviously hearsay.

THE COURT: That's not hearsay.

MR. SCHNEIDER: All right. It says, "He was concerned that the journal was reporting research findings under the sponsorship of the tobacco industry, so he brought the matter to the attention of the Thoracic Society."

THE COURT: I don't have any problem with that.

MR. SCHNEIDER: All right.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the Industry Documents Library: www.industrydocuments.ucsf.edu/docs/tqjl0001

THE COURT: The key to the thing is the statement on Page 55, Line 10 through 15: "It was of great concern that there not be a perception of opposing all that the tobacco industry stands for while at the same time taking money for research from them and publishing the results."

And that's what they were concerned about. Then we get into the second article, "The Smoking Lamp." Now, in this particular article on Page 58, there is a reference--I think it's a quote. They started quoting. Something about deceptive marketing practices aimed at children and minority people.

MR. SCHNEIDER: He was just reading from the article that deals with the youth marketing issue. I think it ought to be excluded.

THE COURT: I'm not really concerned about the youth marketing. What I'm concerned about is deceptive. That is more interesting to me than youth marketing. So we are talking about--let me read the article. This is the one called--

MR. MOODHE: "Smoking Lamps Should Not Be Lit."

THE COURT: "Smoking Lamps." I'm not so sure that's the one.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/tqjl0001

MR. SCHNEIDER: It's Tab 3 of the plaintiffs' exhibits.
THE COURT: I'm sorry, sir?
MR. SCHNEIDER: Tab 3 of the plaintiffs' exhibits. That was the first set of exhibits. Or behind Tab 1 of the defendants'.
THE COURT: Yes. I've got that. Well, when we get into the article itself, I've got a problem. I got down to the point where they are talking about Congressman Waxman engaged in a deliberate and intentional cover-up of the adverse effects and made that claim. They talked about the cover-up in the tobacco industry. And I don't expect this article to get into evidence for that reason. We have a problem with that.
MR. MOODHE: The prior pages I think in the long explanation he gave of the process, I think it's quite clear that there were various levels of consideration including he mentions the fact there were pro and con editorials published, and I think that does it. Then you don't have to get into the substance of those pro's and con's, and the process is there all laid out.
THE COURT: I don't think it was mentioned in the deposition, these issues that are

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Digitized by the Internet Archive in 2014 http://www.industrydocuments.ucsf.edu/docs/tqjl0001

actually in the article.
MR. SCHNEIDER: You don't have to read the passages from the article, which is hearsay, and also reporting what somebody else said.
MS. ROSENBLATT: I think it's coming in to show the basis for the decision that was made as opposed to saying that, you know, we are proving that this is true. We are just going to show the basis for that decision.
THE COURT: If that's true, you can say it in one phrase: Page 55, Line 10. That's the whole kit and caboodle. If that's all this is about, I don't have to go through this whole mess here.
MR. SCHNEIDER: That's what I was suggesting earlier.
THE COURT: I mean, if that's really why they did it. It's one thing if they did it because they truly believed that the tobacco industry was doing something uncalled for, underhanded or was doing something deceptive and all that.
All of that would be excludable because there is no proof of that from any reliable source, really, because of those articles, so I couldn't get

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Digitized by the Internet Archive in 2014 http://www.industrydocuments.ucsf.edu/docs/tqjl0001

those in any way. So it really would be excludable, unless you can show me some legal way that you can get it in.

MS. ROSENBLATT: I just think that it's coming in not for the truth. It's coming in to show--

THE COURT: That's why it's coming.

MS. ROSENBLATT: --the basis for the decision.

THE COURT: Then you don't need it.

MS. ROSENBLATT: Because the basis for the decision is, you know---

THE COURT: No.

MS. ROSENBLATT: Part of it was the deception. That's just a fact that they believed and that was the basis for, like, state of mind.

THE COURT: No. That's not what the deposition talks about. That may be what the article talks about, but it's not what the deposition talks about. So if you're talking about having it come in for the deception purposes, then it won't, not on the basis of this deposition.

MS. ROSENBLATT: Maybe we should just, you know, eliminate some of the--

THE COURT: No.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Digitized by the Internet Archive in 2014 http://www.industrydocuments.ucsf.edu/docs/tqjl0001

MS. ROSENBLATT: --some of the language in this.

THE COURT: It's a tough area, actually. You're dealing with outside and a third source. I can understand their position saying, look, if we are really talking about cancer, throat cancer and lung cancer and all that, why are we associating ourselves with the tobacco industry? I mean, that I can understand. If they want to come out and say, look, the tobacco industry has been less than honest with us and has given us deceptive information and is lying to us, I can understand them saying that, but where is the proof? I mean, how can that come into a court of law just based on the article? It can't. I can't see getting it in for that use.

And if you want to talk about the fact that they don't want to do any more research with the tobacco industry only on the basis of alleged conflict of interest, well, so be it, then you've already done that.

I think I have a problem with that. I'm still wrestling with it. Then that eliminates for the most part a lot of their cross-examination. A great deal of what they cross-designated gets into

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support for www.industrydocuments.ucsf.edu/docs/tqjl0001

areas of cross-examination on that.

I think we are getting far afield from where we really want to be. This is the problem. I don't think you can bring that in as part of your count on misrepresentation.

MS. ROSENBLATT: Well, I think, though, you know, the issues of the case sometimes are framed also by the defense, and the defense in this case spent a great deal of opening statement about CTR being like NIH, the American Cancer Society, this truly independent agency that functions like all other agencies, and I believe in the scientific communities that is simply not so and this is basically--this is the firsthand position of someone, that it's not some. So they aren't treated--there is no other organization that is prohibited from even presenting publications because of---

THE COURT: But you're making assumptions you can't back up. That's where the problem comes in.

MS. ROSENBLATT: No. I believe---

THE COURT: If somebody can come in here and say, look, we have definitive proof that we will submit, and what they intend to submit is false

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Digitized by the Internet Archive in 2014 http://www.industrydocuments.ucsf.edu/docs/tqjl0001

misrepresentation, and they are people of authority, then I can say okay, maybe that would be accurate.

But just simply by saying what they say in this article, maybe a reference to Waxman and the rest of the stuff, I just don't think that's going to be sufficient. And I think it's just going to muddy up the water. And frankly, I'm not sure you even need this thing.

MS. ROSENBLATT: Well, we think it's important since they have presented as an issue in the case that this is like NIH, the American Cancer Society, and here, you know, the fact--and as Your Honor said, there has been some testimony in here to explain the basis for this decision.

THE COURT: Well, how are you going to attack this point here? This Smoking Lamp, on the first page of it, the right-hand column, the paragraph that starts with, "First, there is no disputing the fact that the tobacco industry is a major contributor in the United States and around the world to lung disease and respiratory illness. Second, there can be no disputing the fact that the tobacco industry, as evidenced in recent hearings conducted by Congress at the request of Congressman Henry Waxman of California, has engaged in a

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/tqjl0001

deliberate and intentional cover-up of the adverse effect of tobacco use." How is that going to come in?

MS. ROSENBLATT: In our case it's been uncontroverted by every expert that testified that there is no dispute and the evidence shows that they are still presenting advertisements and communications and taking the position and all the scientists that it doesn't cause disease when it's just--the earth is round. It's a fact. Everyone knows it causes disease. They are taking a completely contrary position. And I believe---

THE COURT: No. I can't extend it that far. You know, it's a very damaging statement; there is no question about that. And it's an article that was put into the journal, I can understand that, but---

MS. ROSENBLATT: It's a position of every major--I mean, it's the position of the Surgeon General. It's the position of every organization throughout the United States. That's been the position that's been presented by every expert. They are trying to reinvent the wheel and create a false controversy. That's everyone's position, that it causes lung cancer, respiratory

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the Industry Documents Library: www.industrydocuments.ucsf.edu/docs/tqjl0001

disease and death. There is no issue about that.
THE COURT: That's a conclusion raised in an article by people we don't know anything about at this point who have made that statement.
MS. ROSENBLATT: I don't need this article in. This has been told by every expert we have had. This article is not critical. I mean, I wasn't---
MR. MOODHE: Then what are we arguing about?
MS. ROSENBLATT: This is not all about this article.
THE COURT: Assuming that the article doesn't come into evidence, what do we need all this for?
MS. ROSENBLATT: The fact that this is not NIH, this isn't the American Cancer Society. This is an organization---
THE COURT: NIH being what?
MS. ROSENBLATT: National Institute of Health.
THE COURT: Okay.
MS. ROSENBLATT: The clear statement in opening statement by defense counsel is that the Council for Tobacco Research has spent hundreds of

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Stanford Library http://www.industrydocuments.ucsf.edu/docs/tqjl0001

millions of dollars and they are a wonderful organization with independent research and Nobel prize winners, when, in fact, among the scientific community they will not even accept the publications of the American Lung Association.

THE COURT: No. That doesn't follow, not on that basis, not from what this deposition says. For the time being I'll exclude it. We'll worry about it later, but I don't think I'm going to let it in.

MR. ROSENBLATT: You walked in basically saying it was coming in.

THE COURT: I thought it was, but the more I thought about it, the more I see what it's all about, there's just not enough substance to use it. I mean, so big deal, he did a lot in Virginia and he worked with the heart and lung association. Everybody knows the position of those organizations, but vis-a-vis the tobacco industry you need more than just "I think they are deceptive." I need more than that, and if you're going to not have it, then I can't find it.

MS. ROSENBLATT: The fact that the American Lung---

THE COURT: They are going to make that

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the Industry Documents Library: www.industrydocuments.ucsf.edu/docs/tqjl0001

conclusion, the jury. The jury decides if they are deceptive and they have been hiding everything and everything else, and that's fine, but not through something like that. This deposition doesn't do that.

Okay. So until I think otherwise on it, that's where we are at.

MS. ROSENBLATT: I'll think about it.

THE COURT: If we don't do Booberg?

MS. ROSENBLATT: We'll have Celemajer to read. We have the Fulford video, but I have to be able--the objections I have not gotten into.

THE COURT: Who?

MS. ROSENBLATT: Fulford, who is the CEO. Very limited, just a few statements.

THE COURT: Okay.

MR. ROSENBLATT: I can designate some things that I wanted to publish from the exhibits. Should I do that now?

MS. ROSENBLATT: One of the exhibits in evidence, we're going to read part of it. You can tell him tomorrow.

MR. ROSENBLATT: From some of the Surgeon's General reports I plan on reading.

THE COURT: Publish something?

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/tqjl0001

MR. ROSENBLATT: Yes.
THE COURT: That's fine. You have all day tomorrow to do that.
Okay. You put a day's work in. Enough. We'll see you tomorrow.
MS. ROSENBLATT: Can we try to get to you for Thursday and Friday some--there are many, many exhibits--some of the exhibits to review in advance or just do that with everyone Monday? Because, again, I mean, I've asked the ones they don't object to. You know, there's a lot of letters and things.
THE COURT: All right. For things that are not agreed upon, have you established some sort of foundation where these things come in?
MS. ROSENBLATT: Yes.
THE COURT: Based upon the previous depositions or what?
MS. ROSENBLATT: Based upon records from the companies.
THE COURT: Company records supplied by them to you?
MS. ROSENBLATT: Yes, yes.
THE COURT: All right.
MS. ROSENBLATT: Or supplied in other

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/tqjl0001

cases. Just records of the company of what happened. They are clearly admissible.

THE COURT: Well, that's what you say, I mean, unless there's an objection. We have to talk about that. Okay. And I don't know what it is you're talking about at this point.

MS. ROSENBLATT: No. I just wanted to know whether you wanted to review those in advance of the actual argument.

THE COURT: How do you mean? Do you have---

MR. HARDY: Your Honor, I don't want to be in a position where you feel--I don't want anybody to be in a position to feel like they are being sandbagged here.

The plaintiffs are talking about hundreds and hundreds of exhibits, hundreds and hundreds of documents. We haven't counted them, but considering the exhibit numbers, which in some cases are composite exhibits consisting of hundreds of documents themselves, I estimate that it's close to a thousand documents. There are hundreds of those where we say there is no foundation for their admissibility, where we say, for example, there is no case that any of these press releases were ever,

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the Industry Documents Library: www.industrydocuments.ucsf.edu/docs/tqjl0001

in fact, released. So we have real problems coming up in connection with the admissibility of a lot of these documents.

Now, there are a few, of course, which are in evidence and I understood that's what Mr. Rosenblatt was talking about a publication tomorrow. So that's different.

THE COURT: I don't mind that. Whatever is in evidence he can publish.

MR. HARDY: Sure. I understand.

MS. ROSENBLATT: I was just trying to facilitate the process as to some documents we will be introducing on Monday to give them in advance, you know, because of Thursday.

THE COURT: He was giving you a clue now. There's a whole bunch of press releases, apparently, that you want to get in.

MS. ROSENBLATT: That they produced to us from the Council for Tobacco Research and so forth.

THE COURT: Right.

MS. ROSENBLATT: And the Tobacco Institute.

THE COURT: Their position is they were never published and were never received from anybody

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Digitized by the Internet Archive in 2007 with funding from Microsoft Corporation
http://www.industrydocuments.ucsf.edu/docs/tqjl0001

but the person who wrote them, and they were never used, so that's going to be a problem that you have to face.

MS. ROSENBLATT: Hopefully, it won't be a problem I have to face. It depends upon the Court.

THE COURT: You have to see. Now you have a clue as to what their position is.

MS. ROSENBLATT: I have had a clue before. I knew that any objection that they could possibly make they would make.

THE COURT: Well, I don't have a clue. I'm probably the clueless person.

MS. ROSENBLATT: It sounds like a movie our kids watched, Clueless.

THE COURT: We'll take up your thing on Monday.

MR. RUSS: Thanks. I appreciate it. Yes, Judge.

THE COURT: All right. Thank you, Judge.

MR. ROSENBLATT: See you tomorrow, Judge.

(The trial was adjourned at 5:05 p.m.)

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
ALL RIGHTS RESERVED

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/tqjl0001

http://legacy.library.ucsf.edu/tid/vtr07a00/pdf
Guttenberg http://www.industrydocuments.ucsf.edu/docs/tqjl0001